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LRB094 18006 LCT 55884 a

1 AMENDMENT TO HOUSE BILL 5376

2 AMENDMENT NO. _____. Amend House Bill 5376 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Business Corporation Act of 1983 is amended
5 by changing Sections 6.15, 8.75, 11.70, and 12.56 as follows:

6 (805 ILCS 5/6.15) (from Ch. 32, par. 6.15)

7 Sec. 6.15. Issuance of fractional shares or scrip. A
8 corporation may, but shall not be obliged to, issue a
9 certificate for a fractional share, and, by action of its board
10 of directors, may in lieu thereof, pay cash equal to the fair
11 value of said fractional share, or issue scrip in registered or
12 bearer form which shall entitle the holder to receive a
13 certificate for a full share upon the surrender of such scrip
14 aggregating a full share. A certificate for a fractional share
15 shall, but scrip shall not unless otherwise provided therein,
16 entitle the holder to exercise fractional voting rights, to
17 receive dividends thereon and to participate in any of the
18 assets of the corporation in the event of liquidation. The
19 board of directors may cause such scrip to be issued subject to
20 the condition that it shall become void if not exchanged for
21 certificates representing full shares before a specified date,
22 or subject to the condition that the shares for which such
23 scrip is exchangeable may be sold by the corporation or by an
24 agent on behalf of the holder thereof and the proceeds thereof

1 distributed to the holders of such scrip or subject to any
2 other conditions which the board of directors may deem
3 advisable.

4 For purposes of this Section, "fair value", with respect to
5 the cashout of a fractional share, means the proportionate
6 interest of the fractional share in the corporation, without
7 any discount for minority status or, absent extraordinary
8 circumstance, lack of marketability.

9 (Source: P.A. 83-1025.)

10 (805 ILCS 5/8.75) (from Ch. 32, par. 8.75)

11 Sec. 8.75. Indemnification of officers, directors,
12 employees and agents; insurance.

13 (a) A corporation may indemnify any person who was or is a
14 party, or is threatened to be made a party to any threatened,
15 pending or completed action, suit or proceeding, whether civil,
16 criminal, administrative or investigative (other than an
17 action by or in the right of the corporation) by reason of the
18 fact that he or she is or was a director, officer, employee or
19 agent of the corporation, or who is or was serving at the
20 request of the corporation as a director, officer, employee or
21 agent of another corporation, partnership, joint venture,
22 trust or other enterprise, against expenses (including
23 attorneys' fees), judgments, fines and amounts paid in
24 settlement actually and reasonably incurred by such person in
25 connection with such action, suit or proceeding, if such person
26 acted in good faith and in a manner he or she reasonably
27 believed to be in, or not opposed to the best interests of the
28 corporation, and, with respect to any criminal action or
29 proceeding, had no reasonable cause to believe his or her
30 conduct was unlawful. The termination of any action, suit or
31 proceeding by judgment, order, settlement, conviction, or upon
32 a plea of nolo contendere or its equivalent, shall not, of
33 itself, create a presumption that the person did not act in

1 good faith and in a manner which he or she reasonably believed
2 to be in or not opposed to the best interests of the
3 corporation or, with respect to any criminal action or
4 proceeding, that the person had reasonable cause to believe
5 that his or her conduct was unlawful.

6 (b) A corporation may indemnify any person who was or is a
7 party, or is threatened to be made a party to any threatened,
8 pending or completed action or suit by or in the right of the
9 corporation to procure a judgment in its favor by reason of the
10 fact that such person is or was a director, officer, employee
11 or agent of the corporation, or is or was serving at the
12 request of the corporation as a director, officer, employee or
13 agent of another corporation, partnership, joint venture,
14 trust or other enterprise, against expenses (including
15 attorneys' fees) actually and reasonably incurred by such
16 person in connection with the defense or settlement of such
17 action or suit, if such person acted in good faith and in a
18 manner he or she reasonably believed to be in, or not opposed
19 to, the best interests of the corporation, provided that no
20 indemnification shall be made with respect to any claim, issue,
21 or matter as to which such person has been adjudged to have
22 been liable to the corporation, unless, and only to the extent
23 that the court in which such action or suit was brought shall
24 determine upon application that, despite the adjudication of
25 liability, but in view of all the circumstances of the case,
26 such person is fairly and reasonably entitled to indemnity for
27 such expenses as the court shall deem proper.

28 (c) To the extent that a present or former director,
29 officer or employee of a corporation has been successful, on
30 the merits or otherwise, in the defense of any action, suit or
31 proceeding referred to in subsections (a) and (b), or in
32 defense of any claim, issue or matter therein, such person
33 shall be indemnified against expenses (including attorneys'
34 fees) actually and reasonably incurred by such person in

1 connection therewith, if the person acted in good faith and in
2 a manner he or she reasonably believed to be in, or not opposed
3 to, the best interests of the corporation.

4 (d) Any indemnification under subsections (a) and (b)
5 (unless ordered by a court) shall be made by the corporation
6 only as authorized in the specific case, upon a determination
7 that indemnification of the present or former director,
8 officer, employee or agent is proper in the circumstances
9 because he or she has met the applicable standard of conduct
10 set forth in subsections (a) or (b). Such determination shall
11 be made with respect to a person who is a director or officer
12 at the time of the determination: (1) by the majority vote of
13 the directors who are not parties to such action, suit or
14 proceeding, even though less than a quorum, (2) by a committee
15 of the directors who are not parties to such action, suit, or
16 proceeding, even though less than a quorum, designated by a
17 majority vote of the directors, ~~even though less than a quorum,~~
18 (3) if there are no such directors, or if the directors so
19 direct, by independent legal counsel in a written opinion, or
20 (4) by the shareholders.

21 (e) Expenses (including attorney's fees) incurred by an
22 officer or director in defending a civil or criminal action,
23 suit or proceeding may be paid by the corporation in advance of
24 the final disposition of such action, suit or proceeding upon
25 receipt of an undertaking by or on behalf of the director or
26 officer to repay such amount if it shall ultimately be
27 determined that such person is not entitled to be indemnified
28 by the corporation as authorized in this Section. Such expenses
29 (including attorney's fees) incurred by former directors and
30 officers or other employees and agents may be so paid on such
31 terms and conditions, if any, as the corporation deems
32 appropriate.

33 (f) The indemnification and advancement of expenses
34 provided by or granted under the other subsections of this

1 Section shall not be deemed exclusive of any other rights to
2 which those seeking indemnification or advancement of expenses
3 may be entitled under any by-law, agreement, vote of
4 shareholders or disinterested directors, or otherwise, both as
5 to action in his or her official capacity and as to action in
6 another capacity while holding such office.

7 (g) A corporation may purchase and maintain insurance on
8 behalf of any person who is or was a director, officer,
9 employee or agent of the corporation, or who is or was serving
10 at the request of the corporation as a director, officer,
11 employee or agent of another corporation, partnership, joint
12 venture, trust or other enterprise, against any liability
13 asserted against such person and incurred by such person in any
14 such capacity, or arising out of his or her status as such,
15 whether or not the corporation would have the power to
16 indemnify such person against such liability under the
17 provisions of this Section.

18 (h) If a corporation indemnifies or advances expenses to a
19 director or officer under subsection (b) of this Section, the
20 corporation shall report the indemnification or advance in
21 writing to the shareholders with or before the notice of the
22 next shareholders meeting.

23 (i) For purposes of this Section, references to "the
24 corporation" shall include, in addition to the surviving
25 corporation, any merging corporation (including any
26 corporation having merged with a merging corporation) absorbed
27 in a merger which, if its separate existence had continued,
28 would have had the power and authority to indemnify its
29 directors, officers, and employees or agents, so that any
30 person who was a director, officer, employee or agent of such
31 merging corporation, or was serving at the request of such
32 merging corporation as a director, officer, employee or agent
33 of another corporation, partnership, joint venture, trust or
34 other enterprise, shall stand in the same position under the

1 provisions of this Section with respect to the surviving
2 corporation as such person would have with respect to such
3 merging corporation if its separate existence had continued.

4 (j) For purposes of this Section, references to "other
5 enterprises" shall include employee benefit plans; references
6 to "fines" shall include any excise taxes assessed on a person
7 with respect to an employee benefit plan; and references to
8 "serving at the request of the corporation" shall include any
9 service as a director, officer, employee or agent of the
10 corporation which imposes duties on, or involves services by
11 such director, officer, employee, or agent with respect to an
12 employee benefit plan, its participants, or beneficiaries. A
13 person who acted in good faith and in a manner he or she
14 reasonably believed to be in the best interests of the
15 participants and beneficiaries of an employee benefit plan
16 shall be deemed to have acted in a manner "not opposed to the
17 best interest of the corporation" as referred to in this
18 Section.

19 (k) The indemnification and advancement of expenses
20 provided by or granted under this Section shall, unless
21 otherwise provided when authorized or ratified, continue as to
22 a person who has ceased to be a director, officer, employee, or
23 agent and shall inure to the benefit of the heirs, executors,
24 and administrators of that person.

25 (l) The changes to this Section made by this amendatory Act
26 of the 92nd General Assembly apply only to actions commenced on
27 or after the effective date of this amendatory Act of the 92nd
28 General Assembly.

29 (Source: P.A. 91-464, eff. 1-1-00; 92-33, eff. 7-1-01.)

30 (805 ILCS 5/11.70) (from Ch. 32, par. 11.70)

31 Sec. 11.70. Procedure to Dissent.

32 (a) If the corporate action giving rise to the right to
33 dissent is to be approved at a meeting of shareholders, the

1 notice of meeting shall inform the shareholders of their right
2 to dissent and the procedure to dissent. If, prior to the
3 meeting, the corporation furnishes to the shareholders
4 material information with respect to the transaction that will
5 objectively enable a shareholder to vote on the transaction and
6 to determine whether or not to exercise dissenters' rights, a
7 shareholder may assert dissenters' rights only if the
8 shareholder delivers to the corporation before the vote is
9 taken a written demand for payment for his or her shares if the
10 proposed action is consummated, and the shareholder does not
11 vote in favor of the proposed action.

12 (b) If the corporate action giving rise to the right to
13 dissent is not to be approved at a meeting of shareholders, the
14 notice to shareholders describing the action taken under
15 Section 11.30 or Section 7.10 shall inform the shareholders of
16 their right to dissent and the procedure to dissent. If, prior
17 to or concurrently with the notice, the corporation furnishes
18 to the shareholders material information with respect to the
19 transaction that will objectively enable a shareholder to
20 determine whether or not to exercise dissenters' rights, a
21 shareholder may assert dissenter's rights only if he or she
22 delivers to the corporation within 30 days from the date of
23 mailing the notice a written demand for payment for his or her
24 shares.

25 (c) Within 10 days after the date on which the corporate
26 action giving rise to the right to dissent is effective or 30
27 days after the shareholder delivers to the corporation the
28 written demand for payment, whichever is later, the corporation
29 shall send each shareholder who has delivered a written demand
30 for payment a statement setting forth the opinion of the
31 corporation as to the estimated fair value of the shares, the
32 corporation's latest balance sheet as of the end of a fiscal
33 year ending not earlier than 16 months before the delivery of
34 the statement, together with the statement of income for that

1 year and the latest available interim financial statements, and
2 either a commitment to pay for the shares of the dissenting
3 shareholder at the estimated fair value thereof upon
4 transmittal to the corporation of the certificate or
5 certificates, or other evidence of ownership, with respect to
6 the shares, or instructions to the dissenting shareholder to
7 sell his or her shares within 10 days after delivery of the
8 corporation's statement to the shareholder. The corporation
9 may instruct the shareholder to sell only if there is a public
10 market for the shares at which the shares may be readily sold.
11 If the shareholder does not sell within that 10 day period
12 after being so instructed by the corporation, for purposes of
13 this Section the shareholder shall be deemed to have sold his
14 or her shares at the average closing price of the shares, if
15 listed on a national exchange, or the average of the bid and
16 asked price with respect to the shares quoted by a principal
17 market maker, if not listed on a national exchange, during that
18 10 day period.

19 (d) A shareholder who makes written demand for payment
20 under this Section retains all other rights of a shareholder
21 until those rights are cancelled or modified by the
22 consummation of the proposed corporate action. Upon
23 consummation of that action, the corporation shall pay to each
24 dissenter who transmits to the corporation the certificate or
25 other evidence of ownership of the shares the amount the
26 corporation estimates to be the fair value of the shares, plus
27 accrued interest, accompanied by a written explanation of how
28 the interest was calculated.

29 (e) If the shareholder does not agree with the opinion of
30 the corporation as to the estimated fair value of the shares or
31 the amount of interest due, the shareholder, within 30 days
32 from the delivery of the corporation's statement of value,
33 shall notify the corporation in writing of the shareholder's
34 estimated fair value and amount of interest due and demand

1 payment for the difference between the shareholder's estimate
2 of fair value and interest due and the amount of the payment by
3 the corporation or the proceeds of sale by the shareholder,
4 whichever is applicable because of the procedure for which the
5 corporation opted pursuant to subsection (c).

6 (f) If, within 60 days from delivery to the corporation of
7 the shareholder notification of estimate of fair value of the
8 shares and interest due, the corporation and the dissenting
9 shareholder have not agreed in writing upon the fair value of
10 the shares and interest due, the corporation shall either pay
11 the difference in value demanded by the shareholder, with
12 interest, or file a petition in the circuit court of the county
13 in which either the registered office or the principal office
14 of the corporation is located, requesting the court to
15 determine the fair value of the shares and interest due. The
16 corporation shall make all dissenters, whether or not residents
17 of this State, whose demands remain unsettled parties to the
18 proceeding as an action against their shares and all parties
19 shall be served with a copy of the petition. Nonresidents may
20 be served by registered or certified mail or by publication as
21 provided by law. Failure of the corporation to commence an
22 action pursuant to this Section shall not limit or affect the
23 right of the dissenting shareholders to otherwise commence an
24 action as permitted by law.

25 (g) The jurisdiction of the court in which the proceeding
26 is commenced under subsection (f) by a corporation is plenary
27 and exclusive. The court may appoint one or more persons as
28 appraisers to receive evidence and recommend decision on the
29 question of fair value. The appraisers have the power described
30 in the order appointing them, or in any amendment to it.

31 (h) Each dissenter made a party to the proceeding is
32 entitled to judgment for the amount, if any, by which the court
33 finds that the fair value of his or her shares, plus interest,
34 exceeds the amount paid by the corporation or the proceeds of

1 sale by the shareholder, whichever amount is applicable.

2 (i) The court, in a proceeding commenced under subsection
3 (f), shall determine all costs of the proceeding, including the
4 reasonable compensation and expenses of the appraisers, if any,
5 appointed by the court under subsection (g), but shall exclude
6 the fees and expenses of counsel and experts for the respective
7 parties. If the fair value of the shares as determined by the
8 court materially exceeds the amount which the corporation
9 estimated to be the fair value of the shares or if no estimate
10 was made in accordance with subsection (c), then all or any
11 part of the costs may be assessed against the corporation. If
12 the amount which any dissenter estimated to be the fair value
13 of the shares materially exceeds the fair value of the shares
14 as determined by the court, then all or any part of the costs
15 may be assessed against that dissenter. The court may also
16 assess the fees and expenses of counsel and experts for the
17 respective parties, in amounts the court finds equitable, as
18 follows:

19 (1) Against the corporation and in favor of any or all
20 dissenters if the court finds that the corporation did not
21 substantially comply with the requirements of subsections
22 (a), (b), (c), (d), or (f).

23 (2) Against either the corporation or a dissenter and
24 in favor of any other party if the court finds that the
25 party against whom the fees and expenses are assessed acted
26 arbitrarily, vexatiously, or not in good faith with respect
27 to the rights provided by this Section.

28 If the court finds that the services of counsel for any
29 dissenter were of substantial benefit to other dissenters
30 similarly situated and that the fees for those services should
31 not be assessed against the corporation, the court may award to
32 that counsel reasonable fees to be paid out of the amounts
33 awarded to the dissenters who are benefited. Except as
34 otherwise provided in this Section, the practice, procedure,

1 judgment and costs shall be governed by the Code of Civil
2 Procedure.

3 (j) As used in this Section:

4 (1) "Fair value", with respect to a dissenter's shares,
5 means the proportionate interest of the shareholder in the
6 corporation, without discount for minority status or,
7 absent extraordinary circumstance, lack of marketability,
8 ~~value of the shares~~ immediately before the consummation of
9 the corporate action to which the dissenter objects
10 excluding any appreciation or depreciation in anticipation
11 of the corporate action, unless exclusion would be
12 inequitable.

13 (2) "Interest" means interest from the effective date
14 of the corporate action until the date of payment, at the
15 average rate currently paid by the corporation on its
16 principal bank loans or, if none, at a rate that is fair
17 and equitable under all the circumstances.

18 (Source: P.A. 86-1156.)

19 (805 ILCS 5/12.56)

20 Sec. 12.56. Shareholder remedies: non-public corporations.

21 (a) In an action by a shareholder in a corporation that has
22 no shares listed on a national securities exchange or regularly
23 traded in a market maintained by one or more members of a
24 national or affiliated securities association, the Circuit
25 Court may order one or more of the remedies listed in
26 subsection (b) if it is established that:

27 (1) The directors are deadlocked, whether because of
28 even division in the number of directors or because of
29 greater than majority voting requirements in the articles
30 of incorporation or the by-laws or otherwise, in the
31 management of the corporate affairs; the shareholders are
32 unable to break the deadlock; and either irreparable injury
33 to the corporation is thereby caused or threatened or the

1 business of the corporation can no longer be conducted to
2 the general advantage of the shareholders; or

3 (2) The shareholders are deadlocked in voting power and
4 have failed, for a period that includes at least 2
5 consecutive annual meeting dates, to elect successors to
6 directors whose terms have expired and either irreparable
7 injury to the corporation is thereby caused or threatened
8 or the business of the corporation can no longer be
9 conducted to the general advantage of the shareholders; or

10 (3) The directors or those in control of the
11 corporation have acted, are acting, or will act in a manner
12 that is illegal, oppressive, or fraudulent with respect to
13 the petitioning shareholder whether in his or her capacity
14 as a shareholder, director, or officer; or

15 (4) The corporation assets are being misapplied or
16 wasted.

17 (b) The relief which the court may order in an action under
18 subsection (a) includes but is not limited to the following:

19 (1) The performance, prohibition, alteration, or
20 setting aside of any action of the corporation or of its
21 shareholders, directors, or officers of or any other party
22 to the proceedings;

23 (2) The cancellation or alteration of any provision in
24 the corporation's articles of incorporation or by-laws;

25 (3) The removal from office of any director or officer;

26 (4) The appointment of any individual as a director or
27 officer;

28 (5) An accounting with respect to any matter in
29 dispute;

30 (6) The appointment of a custodian to manage the
31 business and affairs of the corporation to serve for the
32 term and under the conditions prescribed by the court;

33 (7) The appointment of a provisional director to serve
34 for the term and under the conditions prescribed by the

1 court;

2 (8) The submission of the dispute to mediation or other
3 forms of non-binding alternative dispute resolution;

4 (9) The payment of dividends;

5 (10) The award of damages to any aggrieved party;

6 (11) The purchase by the corporation or one or more
7 other shareholders of all, but not less than all, of the
8 shares of the petitioning shareholder for their fair value
9 and on the terms determined under subsection (e); or

10 (12) The dissolution of the corporation if the court
11 determines that no remedy specified in subdivisions (1)
12 through (11) or other alternative remedy is sufficient to
13 resolve the matters in dispute. In determining whether to
14 dissolve the corporation, the court shall consider among
15 other relevant evidence the financial condition of the
16 corporation but may not refuse to dissolve the corporation
17 solely because it has accumulated earnings or current
18 operating profits.

19 (c) The remedies set forth in subsection (b) shall not be
20 exclusive of other legal and equitable remedies which the court
21 may impose.

22 (d) In determining the appropriate relief to order pursuant
23 to this Section, the court may take into consideration the
24 reasonable expectations of the corporation's shareholders as
25 they existed at the time the corporation was formed and
26 developed during the course of the shareholders' relationship
27 with the corporation and with each other.

28 (e) If the court orders a share purchase, it shall:

29 (i) Determine the fair value of the shares, with or
30 without the assistance of appraisers, taking into
31 account any impact on the value of the shares resulting
32 from the actions giving rise to a petition under this
33 Section;

34 (ii) Consider any financial or legal constraints

1 on the ability of the corporation or the purchasing
2 shareholder to purchase the shares;

3 (iii) Specify the terms of the purchase,
4 including, if appropriate, terms for installment
5 payments, interest at the rate and from the date
6 determined by the court to be equitable, subordination
7 of the purchase obligation to the rights of the
8 corporation's other creditors, security for a deferred
9 purchase price, and a covenant not to compete or other
10 restriction on the seller;

11 (iv) Require the seller to deliver all of his or
12 her shares to the purchaser upon receipt of the
13 purchase price or the first installment of the purchase
14 price; and

15 (v) Retain jurisdiction to enforce the purchase
16 order by, among other remedies, ordering the
17 corporation to be dissolved if the purchase is not
18 completed in accordance with the terms of the purchase
19 order.

20 For purposes of this subsection (e), "fair value", with
21 respect to a petitioning shareholder's shares, means the
22 proportionate interest of the shareholder in the corporation,
23 without any discount for minority status or, absent
24 extraordinary circumstances, lack of marketability.

25 The purchase ordered pursuant to this subsection (e) shall
26 be consummated within 20 days after the date the order becomes
27 final unless before that time the corporation files with the
28 court a notice of its intention to dissolve and articles of
29 dissolution are properly filed with the Secretary of State
30 within 50 days after filing the notice with the court.

31 After the purchase order is entered and before the purchase
32 price is fully paid, any party may petition the court to modify
33 the terms of the purchase and the court may do so if it finds
34 that such changes are equitable.

1 Unless the purchase order is modified by the court, the
2 selling shareholder shall have no further rights as a
3 shareholder from the date the seller delivers all of his or her
4 shares to the purchaser or such other date specified by the
5 court.

6 If the court orders shares to be purchased by one or more
7 other shareholders, in allocating the shares to be purchased by
8 the other shareholders, unless equity requires otherwise, the
9 court shall attempt to preserve the existing distribution of
10 voting rights and other designations, preferences,
11 qualifications, limitations, restrictions and special or
12 relative rights among the holders of the class or classes and
13 may direct that holders of a specific class or classes shall
14 not participate in the purchase.

15 (f) When the relief requested by the petition includes the
16 purchase of the petitioner's shares, then at any time within 90
17 days after the filing of the petition under this Section, or at
18 such time determined by the court to be equitable, the
19 corporation or one or more shareholders may elect to purchase
20 all, but not less than all, of the shares owned by the
21 petitioning shareholder for their fair value. An election
22 pursuant to this Section shall state in writing the amount
23 which the electing party will pay for the shares.

24 (1) The election shall be irrevocable unless the court
25 determines that it is equitable to set aside or modify the
26 election.

27 (2) If the election to purchase is filed by one or more
28 shareholders, the corporation shall, within 10 days
29 thereafter, give written notice to all shareholders. The
30 notice must state: (i) the name and number of shares owned
31 by the petitioner; (ii) the name and number of shares owned
32 by each electing shareholder; and (iii) the amount which
33 each electing party will pay for the shares and must advise
34 the recipients of their right to join in the election to

1 purchase shares. Shareholders who wish to participate must
2 file notice of their intention to join in a purchase no
3 later than 30 days after the date of the notice to them or
4 at such time as the court in its discretion may allow. All
5 shareholders who have filed an election or notice of their
6 intention to participate in the election to purchase
7 thereby become parties to the proceeding and shall
8 participate in the purchase in proportion to their
9 ownership of shares as of the date the first election was
10 filed, unless they otherwise agree or the court otherwise
11 directs.

12 (3) The court in its discretion may allow the
13 corporation and all non-petitioning shareholders to file
14 an election to purchase the petitioning shareholder's
15 shares at a higher price. If the court does so, it shall
16 allow other shareholders an opportunity to join in the
17 purchase at the higher price in accordance with their
18 proportionate ownership interest.

19 (4) After an election has been filed by the corporation
20 or one or more shareholders, the proceeding filed under
21 this Section may not be discontinued or settled, nor may
22 the petitioning shareholder sell or otherwise dispose of
23 his or her shares, unless the court determines that it
24 would be equitable to the corporation and the shareholders,
25 other than the petitioner, to permit the discontinuance,
26 settlement, sale, or other disposition. In considering
27 whether equity exists to approve any settlement, the court
28 may take into consideration the reasonable expectations of
29 the shareholders as set forth in subsection (d), including
30 any existing agreement among the shareholders.

31 (5) If, within 30 days of the filing of the latest
32 election allowed by the court, the parties reach agreement
33 as to the fair value and terms of purchase of the
34 petitioner's shares, the court shall enter an order

1 directing the purchase of petitioner's shares upon the
2 terms and conditions agreed to by the parties.

3 (6) If the parties are unable to reach an agreement as
4 provided for in paragraph (5) of this subsection (f), the
5 court, upon application of any party, shall stay the
6 proceeding under subsection (a) and shall determine the
7 fair value of the petitioner's shares pursuant to
8 subsection (e) as of the day before the date on which the
9 petition under subsection (a) was filed or as of such other
10 date as the court deems appropriate under the
11 circumstances.

12 (g) In any proceeding under this Section, the court shall
13 allow reasonable compensation to the custodian, provisional
14 director, appraiser, or other such person appointed by the
15 court for services rendered and reimbursement or direct payment
16 of reasonable costs and expenses, which amounts shall be paid
17 by the corporation.

18 (Source: P.A. 94-394, eff. 8-1-05.)".