

HOUSE BILL REPORT

HB 1068

As Reported by House Committee On:
Judiciary

Title: An act relating to the Washington business corporation act.

Brief Description: Revising the Washington business corporation act.

Sponsors: Representatives Pedersen and Rodne; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Judiciary: 1/12/09, 1/15/09 [DP].

Brief Summary of Bill

- Amends procedures, such as notice provisions, in the Washington Business Corporation Act (WBCA) governing corporate action taken without a shareholders' meeting or vote.
- Defines and applies the term "corporate action" consistently throughout the WBCA and makes technical corrections to reflect changes to the WBCA made in 2007 on plurality voting.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts and Warnick.

Staff: Trudes Tango (786-7384)

Background:

Corporate Action Taken Without Shareholder Meeting or Vote.

Under the Washington Business Corporation Act (WBCA), action required or permitted to be taken at a shareholders' meeting may be taken without a meeting or a vote if the action is

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taken by all shareholders entitled to vote on the action (unanimous consent). Action may be taken without a meeting or a vote by less than unanimous consent if: (1) authorized by the articles of incorporation; (2) the consenting shareholders hold as many votes as would be necessary to take the action if all shares entitled to vote were present at a meeting; and (3) the corporation is not a public corporation. Action taken without a meeting or vote is taken by shareholder consent by a written or electronically-transmitted record.

The "record date," which is the date that determines which shareholders are entitled to take action, is the date that the first shareholder consent is executed (meaning signed or electronically transmitted). If there are not enough shareholder consents delivered to the corporation within 60 days from the earliest dated delivered consent, then the consents are not effective.

Notice of the taking of action by shareholders without a meeting by less than unanimous consent must be given before the effective date of the action. The corporation's articles of incorporation must specify the amount and form of notice required to nonconsenting shareholders. Notice must go to nonconsenting shareholders entitled to vote, and if the WBCA would otherwise require notice of the action to be given to nonvoting shareholders, then to those shareholders as well.

If the action is of a type that would constitute a "significant business transaction" as defined by the WBCA, or would entitle a shareholder to exercise dissenter rights, such as a merger or acquisition, then certain types of notice to shareholders must be given. The statutes governing "significant business transactions" (often referred to as the anti-takeover laws) apply to public corporations (which cannot use the less-than-unanimous consent provisions) and to a few private corporations that opt in to the anti-takeover laws.

Majority Voting Provisions.

The WBCA allows for plurality voting to elect the directors of a corporation. Plurality voting basically allows for the election of a director candidate who gets more votes than other candidates, but does not require a candidate to get a majority of votes. In 2007 the Legislature passed a bill that, among other things, gave corporations increased ability to modify plurality voting and to allow for different voting standards. Some of the statutes in the WBCA dealing with plurality voting were not amended in the 2007 bill.

Summary of Bill:

The statute governing shareholder actions taken without a shareholders' meeting or vote is amended, specifically the notice provisions. Notice that shareholder consents are being sought must be given on or promptly after the record date to all shareholders entitled to vote on the record date who have not executed consent. If the WBCA would otherwise require that notice of a meeting to take the action be given to nonvoting shareholders, then notice must be provided to all nonvoting shareholders as well (regardless of whether the action is by unanimous or less-than-unanimous consent). Notice that shareholder consent is being sought may be given either by the corporation or by another person soliciting shareholder consents.

In addition, a second notice stating that sufficient shareholder consents have been executed must be given by the corporation promptly after delivery to the corporation of shareholder consents sufficient to approve the action.

A corporation's articles of incorporation no longer needs to specify the amount and form of notice required for action taken by less than unanimous consent. The more specific provisions governing notice for significant business transactions and dissenter's rights are removed.

The first shareholder consent executed need not be delivered to the corporation on the date of the execution in order for that execution date to be the record date.

The term "corporate action" is defined and used throughout the WBCA for consistency and to clarify the distinction between the matter being approved versus the action of approving. Other technical corrections are made to reflect changes made in 2007 on plurality voting.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill cleans up the ambiguities in the nonunanimous shareholder consent provision of the WBCA. It will give corporations the ability to act quickly. This bill is largely technical to fix changes made to the WBCA in previous years. Provisions were adopted in 1997 allowing for nonunanimous consent in order to modernize Washington's statutes to be consistent with other states. Some of those provisions from 1997 resulted in confusion about the specifications of advance notice and allowing a corporation to determine for themselves how much notice is given. In discussing this bill, the Corporations section of the Washington State Bar Association decided that the existing advance notice requirement was ambiguous and it would be better to have dual notice requirements. Notice must be given at the beginning and the end. The cross-reference between the nonunanimous consent provision and the anti-takeover statute also caused confusion. The use of the word "action" in the WBCA could be read two different ways and this bill eliminates the dual usage of that word.

(Opposed) None.

Persons Testifying: Representative Pedersen, prime sponsor; and John Steel, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.