

HOUSE BILL REPORT

HB 1386

As Reported by House Committee On:
Judiciary

Title: An act relating to shareholder quorum and voting requirements under the Washington business corporation act.

Brief Description: Addressing shareholder quorum and voting requirements under the Washington business corporation act.

Sponsors: Representatives Carlyle and Rodne.

Brief History:

Committee Activity:

Judiciary: 2/2/11, 2/3/11 [DPS].

Brief Summary of Substitute Bill

- Establishes alternative shareholder quorum and voting requirements applicable to corporations that have foreign shareholders and meet other specified criteria.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Edie Adams (786-7180).

Background:

The Washington Business Corporations Act (WBCA) provides default rules with respect to quorum and voting requirements for corporate actions. A corporation may alter these requirements in its articles of incorporation as long as the altered quorum and voting requirements meet certain minimum standards in the WBCA.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In some instances, a voting group representing a particular class or series of shares may be entitled to vote separately on proposed corporate actions. When separate voting by voting groups is required, quorum and voting requirements must be met for the voting group representing all shares entitled to vote on the action, as well as for each voting group entitled to vote separately on the action.

Quorum Requirements.

The WBCA provides that a majority of the votes entitled to be cast on an action represents a quorum. The articles of incorporation may provide for a greater or lesser quorum requirement as long as it is not less than one-third of votes entitled to be cast on the action.

Voting Requirements.

Generally the WBCA provides that if a quorum exists, corporate action is approved if the votes approving the corporate action exceed the votes opposing the corporate action, unless the articles require a greater voting requirement.

However, there are a number of corporate actions that may be taken by the board of directors only upon approval of the shareholders, and approval of these actions is subject to different voting requirements. These actions include: amendments to some provisions of the articles of incorporation; mergers or share exchanges; the sale of the assets of the corporation other than in the regular course of business; and dissolution of the corporation.

With respect to these actions, the WBCA generally requires the action to be approved by two-thirds of the votes entitled to be cast. The articles of incorporation may require a greater or lesser voting requirement as long as the voting requirement is not less than a majority of all votes entitled to be cast on the action.

Summary of Substitute Bill:

The WBCA is amended to establish alternative shareholder quorum and voting requirements that are applicable to corporations that have foreign shareholders and meet other specified criteria.

Alternative Quorum Requirements.

The required quorum of the voting group consisting of all shares entitled to be cast, and of each voting group entitled to vote separately on the action, is the lesser of:

- a majority of the shares other than shares credited to stock depositories located in a member state of the European Union, as long as this majority equals or exceeds one-sixth of the total votes entitled to be cast by the voting group; or
- one-third of the total votes entitled to be cast by the voting group.

Alternative Voting Requirements.

The vote required for approval by any voting group entitled to vote on the corporate action is a majority of the votes actually cast by the voting group, as long as the votes approving the action equal or exceed 15 percent of the votes within the voting group.

This alternative voting requirement applies to the following corporate actions: amendment of the articles of incorporation or bylaws; plan of merger or share exchange; disposition of all or substantially all of the corporation's property not in the usual and regular course of business; and dissolution.

Criteria for Alternative Quorum and Voting Requirements.

A corporation must meet all of the following requirements in order to be subject to the alternative shareholder quorum and voting requirements.

As of the record date of the annual or special meeting of shareholders: the corporation is a public company; shares of its common stock are listed on a European Union regulated market; and at least 20 percent of the corporation's shares are credited to the accounts of stock depositories located in a member state of the European Union.

At the time such shares were initially listed on the European Union regulated market, the corporation's shares were listed on the New York Stock Exchange or the NASDAQ Stock Market.

The listing of shares on the European Union regulated market was a condition to the acquisition of 100 percent of the equity interests of a foreign corporation and certain other conditions relating to the acquisition are met.

At the corporation's most recent annual or special meeting less than 65 percent of the shares within the voting group comprising all the votes entitled to be cast were present in person or by proxy.

Substitute Bill Compared to Original Bill:

The substitute bill added an emergency clause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This legislation is necessary to address a very unique and difficult situation that a local company, Cell Therapeutics, Incorporated (CTI), has encountered as a result of a 2004

acquisition of an Italian research company. Cell Therapeutics, Incorporated is a local biotech company in existence for over 20 years that has been successful in its mission to develop less toxic and more effective cancer treatments. The 2004 merger agreement required CTI shares to remain on the Italian stock exchange, and as a result, CTI became subject to Italian disclosure and confidentiality laws. Under Italian privacy laws, CTI is unable to know who holds their shares and so cannot communicate with Italian shareholders regarding corporate actions. Because more than a majority of CTI shares are now held outside the United States, CTI is unable to send a notice of shareholder meetings to a majority of its shareholders. On three recent occasions, CTI has had to adjourn meetings because of an inability to get the required votes to pass important measures.

The bill does not change the rights of United States shareholders. The legislation is narrowly drafted to address a unique situation. Cell Therapeutics, Incorporated is the only biotech company in the world listed on more than one market where a majority of shares are held outside of the United States. It would be very difficult for another company to meet these requirements.

The legislation needs an emergency clause. Cell Therapeutics, Incorporated has an inadequate number of shares right now to raise additional capital that it needs to continue its operations and to move forward to market two new cancer treatment drugs that are poised for approval.

(Opposed) None.

Persons Testifying: Representative Carlyle, prime sponsor; Denny Eliason and Jim Bianco, Cell Therapeutics Incorporated; and William Gleeson, K and L Gates.

Persons Signed In To Testify But Not Testifying: None.