

HOUSE BILL REPORT

SSB 6169

As Passed House - Amended:

February 28, 1996

Title: An act relating to amending provisions regarding significant business transactions in the Washington business corporation act.

Brief Description: Amending the business corporation act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith, Johnson, Newhouse and Winsley).

Brief History:

Committee Activity:

Law & Justice: 2/21/96 [DPA].

Floor Activity:

Passed House - Amended: 2/28/96, 94-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Murray; Robertson; Smith; Sterk and Veloria.

Staff: Edie Adams (786-7180).

Background: The Washington Business Corporations Act (WBCA) contains provisions which place restrictions on the hostile takeover of Washington corporations or foreign corporations with substantial economic ties to Washington. One chapter of the WBCA places a moratorium on the ability of some shareholders to enter into specified business transactions with a target corporation unless the transaction is approved in advance by the board of directors of the corporation (the anti-takeover statute). Another section of the WBCA restricts certain shareholders from entering into specified transactions with the corporation unless approved by a supermajority of the disinterested shareholders of the corporation (two-tier pricing statute).

Anti-takeover Statute: A target corporation may not enter into a "significant business transaction" with an "acquiring person" within five years of the date the person

became an acquiring person, unless the significant business transaction or the share acquisition by the acquiring person is approved in advance by a majority of the target corporation's board of directors.

An "acquiring person" is a person or group of persons who beneficially own 10 percent or more of the outstanding voting shares of the target corporation. A "significant business transaction" includes a merger or consolidation of the target corporation with an acquiring person; the disposition or encumbrance of more than 5 percent of the target corporation's assets; the termination of more than 5 percent of the target corporation's Washington employees; or the reclassification of securities to increase the proportionate share of the outstanding voting shares owned by the acquiring person. A target corporation may be either a domestic corporation that meets specified economic criteria or a foreign corporation that meets specified economic criteria.

If a target corporation engages in a significant business transaction in violation of the chapter, the transaction is void and the target corporation shall have its certificate of incorporation revoked.

Two-tier Pricing Statute: The two-tier pricing statute prohibits certain transactions (for example, mergers, dissolutions, or the sale of assets other than in the regular course of business) between a corporation and an interested shareholder unless the transaction is approved by a supermajority (two-thirds) of all non-interested shareholders. This supermajority requirement does not apply to a transaction (1) by a corporation with fewer than 300 shareholders of record; (2) approved by a majority vote of the corporation's board of directors; (3) in which the board determines that the fair market value of the consideration to be received by non-interested shareholders is not less than the highest fair market value of consideration paid by an interested shareholder in acquiring shares within 24 months of the proposed transaction; or (4) by a corporation that has elected not to be covered by the two-tier pricing provision.

The anti-takeover statute and the two-tier pricing statute both apply to some types of transactions, but the sections apply different rules and standards to those transactions. For example, both provisions apply to mergers or the sale of the corporation's assets. Under the anti-takeover provisions, the merger or sale would be prohibited for five years unless approved by a majority vote of the board of directors. Under the two-tier pricing statute, the transaction is prohibited unless approved by a supermajority vote of the shareholders, or the fair market value of consideration received per share by non-interested shareholders meets specified criteria.

Summary of Bill: The two-tier pricing section of the WBCA is repealed and the anti-takeover chapter of the WBCA is amended to include some of the conceptions and coverage of the two-tier pricing provision.

The definition of "target corporation" is amended to include a domestic corporation if that has a class of voting shares registered with the Securities and Exchange Commission (SEC), or that has amended the articles of incorporation to provide that it shall be covered by the provisions of the anti-takeover chapter. The requirements that must be met for a foreign corporation to be considered a target corporation are amended so that the corporation has a class of voting shares registered with the SEC.

The definition of "acquiring person" is amended to exclude beneficial owners of more than 10 percent of the corporation's voting shares prior to the time the corporation had shares registered with the SEC, or prior to the time the corporation's articles of incorporation were amended to provide that the corporation is to be subject to the provisions of the anti-takeover chapter.

The definition of "significant business transaction" is amended to include share exchanges, to exclude the adoption of a plan or proposal for the sale of assets, and to exclude agreements, contracts, or other arrangements providing for any of the specified transactions. Definitions are provided for "announcement date," "consummation date," "common shares," "domestic corporation," "preferred shares," "shares," and "voting shares."

Provisions are added to provide that a target corporation may engage in a significant business transaction with an acquiring person only if the consideration that will be paid per share to holders of outstanding shares of the target corporation meet specified criteria. These provisions do not apply if the corporation had a provision in its articles of incorporation on the effective date of this act expressly electing not to be covered by the two-tier pricing section (repealed by this act).

The penalty of revocation of a corporation's certificate of incorporation for entering into a transaction in violation of the anti-takeover provisions is deleted. A transaction entered into in violation of the chapter is void.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Current provisions of the corporation's act dealing with hostile takeovers are somewhat inconsistent. This bill merges these inconsistent provisions to remove the current ambiguity in the law and to conform more closely with other states' laws in this area. The bill does not substantively change the protections of the current law.

Testimony Against: None.

Testified: Kent Carlson, Washington State Bar Association (pro).