

# HOUSE BILL REPORT

## HB 1042

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**As Passed House:**  
January 29, 2007

**Title:** An act relating to business transactions.

**Brief Description:** Modifying the share acquisition time period for engaging in a significant business transaction.

**Sponsors:** By Representatives Rodne, Pedersen, Moeller and Lantz.

**Brief History:**

**Committee Activity:**

Judiciary: 1/12/07, 1/17/07 [DP].

**Floor Activity:**

Passed House: 1/29/07, 97-0.

**Brief Summary of Bill**

- Creates an exemption to the five year "freeze-out" period in the corporate anti-takeover law. The exemption allows a corporation to engage in a significant business transaction with an acquiring person within the five year period if the board of directors and a supermajority of the shareholders approve.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

**Staff:** Trudes Tango (786-7384).

**Background:**

Washington's Business Corporation Act contains provisions which place restrictions on the hostile takeover of Washington corporations and foreign corporations with substantial economic ties to Washington.

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*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.*

Generally, when a person acquires 10 percent or more of the outstanding voting shares of a target corporation, the target corporation is prohibited, for a period of five years following the acquiring person's share acquisition, from engaging in a "significant business transaction" with the acquiring person unless certain exemptions apply.

The only exemptions to the five year prohibition is if the board of directors of the target corporation either approved the significant business transaction before the acquiring person's share acquisition or approved of the acquiring person's purchase of the shares before the share acquisition.

"Significant business transaction" includes, for example, a merger of the target company with the acquiring person, the substantial sale of the target corporation's assets to the acquiring person, a significant change in the target corporation's employment personnel, and the liquidation or dissolution of a target corporation proposed by the acquiring person. "Person" includes an individual, corporation, or other business entity.

The Corporate Act Revision Committee of the Washington State Bar Association conducted a year-long study of Washington's anti-takeover law compared to other states' laws. Other states, including Delaware, allow a target corporation to engage in a significant business transaction with the acquiring person before the expiration of its "freeze-out" period if the majority of the board of directors and a supermajority of the shareholders approve.

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#### **Summary of Bill:**

An exemption is added to Washington's anti-takeover statute. A corporation may engage in a significant business transaction with an acquiring person after the person's share acquisition and notwithstanding the five year bar, if the significant business transaction is: (a) approved by a majority of the board of directors; and (b) authorized, at an annual or special shareholder meeting, by at least two-thirds of the outstanding voting shares, not including the acquiring person's voting shares. The shareholders' authorization may not be by written consent.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

#### **Staff Summary of Public Testimony:**

(In support) This bill strikes a balance in the takeover statute by permitting post-acquisition transactions when it makes sense. It brings Washington law in line with Delaware and other states. Washington's "freeze-out" approach is supposed to encourage a potentially acquiring person to deal with the board of directors before acquiring the shares. This bill is a cure to

situations when everyone agrees on a significant business transaction after the acquiring shares time.

(Opposed) None.

**Persons Testifying:** Kent Carlson, Washington State Bar Association, Corporate Act Revision Committee.

**Persons Signed In To Testify But Not Testifying:** None.