

# HOUSE BILL REPORT

## SB 5123

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**As Passed House:**

April 8, 2003

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

**Brief Description:** Revising the Washington business corporation act.

**Sponsors:** By Senators Johnson, Kline and Esser.

**Brief History:**

**Committee Activity:**

Judiciary: 3/21/03, 3/25/03 [DP].

**Floor Activity:**

Passed House: 4/8/03, 95-0.

**Brief Summary of Bill**

- The Washington Business Corporations Act is amended in the areas of shareholder notice requirements, shareholder voting group rights, and stock splits.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Edie Adams (786-7180).

**Background:**

The Washington Business Corporations Act (WBCA) provides rules and requirements on the creation, organization and operation of corporations and the relationship between shareholders, directors and officers of the corporation. Many of the provisions of the WBCA provide default rules that may be altered or modified in the corporation's articles of incorporation. The articles of incorporation are the governing documents for the corporation and set forth a myriad of rules and requirements with respect to numerous organizational and operational issues.

A corporation sends a number of communications to shareholders, including notices to shareholders of annual and special meetings. Notice is generally only required to be given to shareholders entitled to vote at the meeting. There are no specific provisions dealing with notice to shareholders who have a common address.

The WBCA contains detailed provisions governing corporate shares and voting rights that attach to those shares. A corporation's articles of incorporation must set forth the classes of shares that may be issued by the corporation and the number of shares of each class that may be issued. If a corporation's articles of incorporation authorize the issuance of more than one class of shares, the articles must give each class a distinguishing designation and the preferences, limitations, and relative rights of each class must be set forth in the articles. In addition, a corporation may have one or more series of shares within a class, and each series must be given a distinguishing designation.

There are a number of actions or transactions that may be taken by the board of directors only upon approval of the shareholders. These include: (a) amendments to some provisions of the articles of incorporation; (b) mergers or share exchanges; (c) disposition of all or most of the corporation's property that is not in the usual course of business; and (d) dissolution of the corporation. Shareholders of a class or series of shares may have the right to vote as a separate voting group on these matters if the class or series of shares is uniquely affected by these amendments or transactions.

A shareholder who is entitled to vote on these transactions may dissent from the action and obtain payment of the fair market value of his or her shares. Dissenter's rights also apply to a shareholder whose shareholder status will be terminated as a result of an amendment to the articles of incorporation.

If a corporation has only one class of outstanding shares, the board of directors may amend the articles without shareholder approval to change the number of shares to effectuate a stock split. This provision does not specify whether the board may effectuate a reverse stock split without shareholder approval.

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### **Summary of Bill:**

The Washington Business Corporations Act (WBCA) is amended in the areas of shareholder notice requirements, shareholder voting group rights, and stock splits.

A corporation may send a single copy of a notice or other record to an address shared by multiple shareholders. Each shareholder sharing the common address must consent to the single notice. The single copy may be addressed to the shareholders as a group or to each shareholder individually. A shareholder may revoke consent to delivery of a single copy of notices and other records.

Provisions of the WBCA relating to shareholder voting groups are amended and clarified in a number of areas.

- A clarification is made that if two or more voting groups are entitled to vote on a matter, action on that matter is taken only when voted upon by each voting group.
- A number of changes are made to the provisions relating to group voting on amendments to the articles of incorporation: (a) an amendment that is submitted to the shareholders must be adopted by the required percentage of all shareholders entitled to vote, in addition to the required vote of all voting groups entitled to vote separately; (b) the right to vote as a separate voting group is limited to holders of shares of a class or series that is adversely affected by the proposed amendment; (c) the right to vote as a separate voting group applies to a proposed amendment that would result in redemption or cancellation of all or part of the shares of the class or series; (d) all of the holders of a single class or series of shares must be entitled to vote as part of the voting group, unless otherwise provided in the articles or as conditioned by the board of directors; (e) the shares of the similarly affected classes or series of shares must vote together as a single voting group, unless otherwise provided in the articles or as conditioned by the board of directors; and (f) a corporation may limit or deny group voting rights relating to certain amendments if explicitly authorized in the articles of incorporation.
- Several changes are made with respect to group voting on mergers and share exchanges: (a) the right of group voting on a merger or share exchange plan is no longer tied to whether group voting would be required if the provision were contained in an amendment to the articles of incorporation; (b) a new section is created describing when group voting rights apply to a plan of merger or share exchange, with rules that are similar to the rules applicable to group voting rights for amendments to the articles of incorporation; and (c) group voting rights with respect to a share exchange plan apply under the same circumstances as group voting rights for a plan of merger.
- Voting requirements relating to a corporation's disposition of its assets other than in the usual and regular course of business, or to a plan of dissolution, are amended to specify that the disposition must be adopted by the required percentage of all shareholders entitled to vote, in addition to the required vote of all voting groups entitled to vote separately.
- A shareholder's right to dissent from an amendment to the articles of incorporation that results in a termination of the shareholder's status is amended to specify that the right to dissent applies whether or not the shareholder was entitled to vote on the amendment.

Finally, the WBCA is amended to provide that a board of directors may effect a reverse

stock split that does not change the proportional relationship between the corporation's outstanding shares and authorized shares.

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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.

**Testimony For:** The bill revises the three areas of the Business Corporations Act that are the most confusing and most susceptible to leading attorneys into malpractice. The purpose of the bill is to clarify the areas where there is disagreement on how the current law works. The changes with respect to shareholder notice at a common address, called householding, are made to conform the requirements to those recently adopted by the Securities and Exchange Commission. The purposes of the voting group rights amendments are to eliminate ambiguities, deal with inconsistencies, and narrow or expand voting group rights in a couple of areas where the statute is currently both over broad and under broad. There is also mass confusion about whether the board can declare reverse stock splits, and the bill clarifies that they can.

**Testimony Against:** None.

**Testified:** John Steel, Washington State Bar Association.