

# HOUSE BILL REPORT

## HB 2499

---

### As Passed Legislature

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

**Brief Description:** Addressing the materials required to accompany notice under the Washington business corporation act.

**Sponsors:** By Representatives Pedersen and Rodne.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/15/08, 1/18/08 [DP].

##### **Floor Activity:**

Passed House: 2/1/08, 95-0.

Passed Senate: 3/7/08, 49-0.

Passed Legislature.

#### **Brief Summary of Bill**

- Addressing the materials required to accompany notice under the Washington Business Corporation Act.

---

### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

**Staff:** Lara Zarowsky (786-7123).

#### **Background:**

##### State Notice Rules

The Washington Business Corporation Act (WBCA) authorizes various methods by which required notices and accompanying materials may be delivered to shareholders and directors, and identifies when such notices are effective, depending on the method used.

---

*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.*

Except in the case of a meeting of the board of directors, which may be communicated orally, notice to shareholders and directors and accompanying materials must be provided in the form of a "record," meaning that information must be inscribed on a tangible medium or contained in an electronic transmission.

In certain circumstances, the WBCA requires additional materials to accompany a notice to directors or shareholders. Additional materials must accompany a meeting notice when the meeting will address:

- an amendment to the articles of incorporation -- a copy of any proposed amendment to the articles of incorporation must accompany the meeting notice;
- a proposed merger or share exchange -- a copy or summary of a plan of merger or share exchange must accompany the meeting notice;
- a proposed sale of all or substantially all of the corporation's assets outside the regular course of business;
- a description of a transaction must accompany the meeting notice -- or any matter giving rise to dissenters' rights under Chapter 13; and
- a copy of Chapter 13 must accompany the meeting notice.

For an electronic transmission of notice and accompanying materials to be effective, shareholders and directors must first "opt-in" by giving affirmative consent to receive electronic notifications, and provide the location to which electronic notices may be transmitted. For those who opt-in, notices and accompanying materials may be provided by (1) posting on an electronic network, and (2) delivering to the shareholder or director a separate record of the posting which includes comprehensive instructions to obtain access to the posting on the electronic network.

Companies with a large or frequently changing shareholder base may encounter difficulty in obtaining consent for electronic transmission of information from each shareholder. As a result, these companies typically rely on physical delivery methods to provide notice and required additional materials to shareholders.

Public companies commonly deliver via mail physical copies of notices to shareholders and additional materials required under state law with proxy statements required by the Securities and Exchange Commission (SEC).

#### Federal "E-proxy" Rules

In July of 2007, the SEC adopted mandatory "e-proxy" rules defining the manner in which proxy materials for securities registered under Section 12 of the Securities Exchange Act of 1934 must be provided to shareholders. By one recent estimate, the average cost to a company to print and mail a paper copy of proxy materials was \$5.64. According to the SEC's rule summary, the e-proxy amendments are intended to enhance the ability of investors to make informed voting decisions, and to expand use of the internet to lower the cost of proxy solicitation.

Under the new rules, effective January 1, 2008, for "large accelerated filers" and January 1, 2009, for all other filers, a company may choose to provide notice to shareholders according to

the "notice only" or "full set delivery" options. Both options require companies to post proxy materials on a publicly accessible website, and to provide paper copies of the posted material upon shareholder request.

*Full set delivery*

The "full set delivery" option allows a company to continue the traditional method of delivering paper copies of proxy materials to shareholders, but also requires the company to send notice and post the proxy materials on an internet website.

*Notice only*

The "notice only" option requires a company to post proxy materials on an internet website and send a notice to shareholders to inform them of the availability of the materials on the internet.

The content of the notice of internet availability required under both options is strictly limited to the information allowed in the e-proxy rules, except that the notice may be incorporated or combined with a meeting notice required under state law.

Implications for Washington Companies

A Washington public company choosing the "notice only" option for delivery of proxy materials may continue to engage in the practice of combining required state law meeting notices with the federally required proxy statement. However, it is not clear that any additional materials required to accompany a meeting notice under the WBCA may be included with the meeting notice and proxy statement under the new SEC e-proxy rules.

Further, since electronic notices are effective under the WBCA only for shareholders and directors who have affirmatively consented to receive notice by electronic transmission, a Washington company may be required to continue to rely on mailing physical copies of notice and accompanying additional materials to ensure compliance with the WBCA's notice requirements.

---

**Summary of Bill:**

A public company may satisfy its requirement under the Washington Business Corporation Act to accompany a notice to shareholders with certain additional material by (1) posting the additional material on an electronic network at or prior to the time the notice is delivered to the shareholders, and (2) delivering to the shareholders a separate record of the posting, together with comprehensible instructions regarding how to access the posting on the electronic network.

The electronic posting is effective to satisfy the company's requirements to provide the additional material with a notice, whether or not a shareholder has consented to receive notice by electronic transmission.

A public company electing to post required additional materials on an electronic network must provide a copy of the additional materials in a tangible medium to any shareholder entitled to such notice who makes a request.

---

**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 is Bar Association request legislation that attempts to harmonize our laws with the Securities and Exchange Commission (SEC) rules. It is basically an environmental measure because it will save a lot of paper, while still allowing anyone who prefers paper copies to opt in to receive them.

Companies typically incorporate notice requirements under state law into proxy statements required by the Securities and Exchange Commission. Sometimes the notice has to be accompanied by other documents. The SEC e-proxy "notice only" option will allow a company to post proxy statements and annual reports on a website. Instead of the typical glossy report, the company will be required to provide only a single page notice at least 40 days before the meeting giving instructions on how to access the website. The proxy rules allow a state notice to be included in the instructions. Companies should be allowed to incorporate additional materials required under state law with the proxy materials. The bill mirrors the SEC's e-proxy rules in providing paper copies if requested by a shareholder.

(Opposed) None.

**Persons Testifying:** Representative Pederson, prime sponsor; Representative Rodne; and Eric DeJong, Corporate Act Revision, Committee Business Law Section of the Washington State Bar Association.

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