

# SENATE BILL REPORT

## HB 1148

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As Reported by Senate Committee On:  
Law & Justice, March 27, 2013

**Title:** An act relating to dissenters' rights under the Washington business corporation act.

**Brief Description:** Addressing dissenters' rights under the Washington business corporation act.

**Sponsors:** Representatives Pedersen, Rodne, Goodman and Ryu; by request of Washington State Bar Association.

**Brief History:** Passed House: 2/27/13, 97-0.

**Committee Activity:** Law & Justice: 3/15/13, 3/27/13 [DP].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; Kline, Ranking Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Jessica Stevenson (786-7465)

**Background:** A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares pursuant to certain requirements for the following corporate actions:

- a plan of merger;
- a plan of share exchange;
- a sale or exchange;
- an amendment of articles of incorporation; or
- any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provide that voting or nonvoting shareholders are entitled to dissent and obtain payment for shares.

One way a plan of merger, to which the corporation is a party, creates dissenters' rights is when the corporation was a subsidiary that has been merged with its parent.

If a proposed corporate action creating dissenters' rights is approved at a shareholders' meeting, the corporation must, within ten days after the effective date of the corporate action, provide to shareholders notice that complies with all requirements. If a proposed corporate

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action creating dissenters' rights is approved without a vote of shareholders, the corporation must provide to shareholders notice that complies with all requirements.

All notice provided in corporate actions that give rise to dissenters' rights must:

- state where the payment demand must be sent;
- state where and when certificates for certificated shares must be deposited;
- inform shareholders of uncertified shares to what extent the transfer of shares will be restricted after the payment demand is received;
- supply a form for demanding payment;
- set a date by which the corporation must receive the payment demand; and
- be accompanied by a copy of RCW 23B.13.

A shareholder who receives notice must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date stated in the notice for demanding payment, and deposit the shareholder's certificates in accordance with the terms of the notice.

**Summary of Bill:** A plan of merger involving a corporation that was a subsidiary creates dissenters' rights if the plan of merger provided for the merger of the subsidiary with its parent.

A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares for any of the following actions:

- an election by a corporation to become a social purpose corporation;
- an election to cease to be a social purpose corporation; or
- an amendment of the social purpose corporation's articles of incorporation that would materially change one or more of the social purposes of the corporation.

When a plan of merger that involves a subsidiary of a corporation gives rise to dissenters' rights, the corporation must provide notice to all shareholders of the subsidiary other than the parent within ten days after the effective date of the corporate action.

When an amendment to the articles of incorporation that does not require approval by the shareholders of the corporation creates dissenters' rights, the corporation must provide notice to all shareholders entitled to dissent within ten days after the effective date of the corporate action.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The changes are needed to ensure that Washington's corporate act is up to the best standards. The changes conform dissenters' rights with changes in previous years about social purpose corporations and clarify the process for dissenters' rights. The changes are only minor technical amendments. The

additional language for social purpose corporations is a cross-reference and not a substantive change since these were created last year in a bill.

**Persons Testifying:** PRO: Representative Pedersen, prime sponsor; Eric DeJong, Business Law Section of WA State Bar Assn.