
Civil Rights & Judiciary Committee

SB 5006

Brief Description: Making updates to Washington's corporation acts.

Sponsors: Senators Pedersen, Holy, Nobles and Wellman; by request of Washington State Bar Association.

Brief Summary of Bill

- Modifies the composition, powers, and limitations of corporate and nonprofit board committees.
- Clarifies provisions related to share options and provides that a corporation may issue rights, options, or warrants for the purchase of other securities of the corporation.
- Clarifies the rights of former holders of shares exchanged in a share exchange.
- Provides for dissenters' rights during a conversion of a corporation.
- Lowers from two-thirds to a majority of the votes the statutory threshold by which shareholders may approve a voluntary dissolution proposal in corporations formed on or after August 1, 2024.

Hearing Date: 3/14/25

Staff: Yelena Baker (786-7301).

Background:

The Washington Business Corporations Act (WBCA) provides requirements for 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

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may be altered in the corporation's articles of incorporation or bylaws. The articles of incorporation and the bylaws are the governing documents for the corporation and set forth rules with respect to numerous organizational and operational issues.

The WBCA is modeled largely after the American Bar Association's revised Model Business Corporations Act (MBCA). The Corporate Act Revision Committee (CARC) of the Business Law Section of the Washington State Bar Association periodically reviews the WBCA and makes recommendations for updating the WBCA to keep it up to date with developments in the law and changes made to the MBCA and to corporate law in other states.

The CARC recommends amendments to the WBCA to update provisions regarding committees of the board of directors, share options, and other changes to correct omissions from previous amendments to the WBCA.

Committees of the Board of Directors—Business Corporations.

Unless the articles of incorporation or bylaws provide otherwise, a board of directors may establish one or more committees of directors. Each committee must have two or more members, who serve at the pleasure of the board of directors.

A committee may exercise the authority of the board of directors to the extent specified by the board or in the articles of incorporation or bylaws. However, a committee may not take certain actions, including:

- filling vacancies on the board of directors or on any committees;
- amending articles of incorporation; or
- approving a plan of merger not requiring shareholder approval.

The board of directors may authorize a committee or a senior executive officer to approve the issuance or sale or contract for sale of shares, or to determine the designation and relative rights, preferences, and limitations of a class or series of shares.

Committees of the Board of Directors—Nonprofit, Mutual, and Miscellaneous Corporations.

Similarly to business corporations, the board of directors of a nonprofit, mutual, or miscellaneous corporation may create one or more committees of the board. Each committee must consist of two or more directors and, with some limitations, has the authority of the board of directors.

Share Options.

A corporation may issue rights, options, or warrants for the purchase of the corporation's shares. The board of directors determines the terms under which the options, rights, and warrants may be issued, as well as their form and content.

The board of directors also determines the terms and conditions relating to the exercise of share options, rights, or warrants, including the time or times, the conditions precedent, and the holders by whom the options, rights, or warrants may be exercised. These terms or conditions may preclude or limit the exercise of the options, rights, or warrants, or invalidate or void any rights,

options, or warrants. In addition, the terms and conditions may be made dependent on facts ascertainable outside the documents relating to the creation of the options, rights, or warrants.

Share Exchanges.

A share exchange is a corporate transaction in which two corporations may combine without either corporation ceasing to exist. In a share exchange, the acquiring entity acquires all of the shares of one or more classes or series of shares of another corporation in exchange for shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing. A plan of share exchange specifies the manner and basis of exchanging the acquired entity's shares.

Dissenters' Rights.

A corporate action is any activity that brings material change to an organization and impacts its stakeholders. Significant corporate actions typically require shareholders to authorize the proposed action by voting.

Under the WBCA, a shareholder is entitled to dissent in the event of certain corporate actions, such as a merger, share exchange, or an election by a business corporation to become a social purpose corporation. The dissenting shareholder may be entitled to obtain payment of the fair value of the shareholder's shares. Unless the corporate action fails to comply with the procedural requirements under the WBCA, a dissenting shareholder who is entitled to obtain payment for the shareholder's shares may not challenge the corporate action.

Dissolution by the Board of Directors and Shareholders.

A voluntary dissolution of a corporation may be proposed by the board of directors for submission to shareholders. The board may condition its proposal for dissolution on any basis, including requiring the otherwise nonvoting holders of a specified percentage of shares to vote affirmatively on the proposed dissolution as a separate voting group.

In addition to any other voting conditions imposed by the board of directors, the proposed dissolution must be approved by two-thirds of the votes entitled to be cast and of each other voting group entitled to vote separately on the proposed dissolution. The articles of incorporation may require a greater or lesser vote, so long as the required vote is not less than a majority of all the votes entitled to be cast and of each other voting group entitled to vote separately.

Summary of Bill:

Committees of the Board of Directors—Business Corporations.

The requirement that each committee established by the board of directors must have at least two members is removed, and instead a board committee must be composed exclusively of one or more directors to perform the functions of the board of directors.

Provisions that disallow a board committee to amend articles of incorporation or approve a plan

of merger not requiring shareholder approval are removed.

Provisions prohibiting a board committee from filling vacancies on the board of directors is retained. The prohibition on filling vacancies on a board committee is modified to permit the board of directors to appoint one or more directors as alternate members of any board committee as replacement for any absent or disqualified member during the member's absence or disqualification. If authorized by the articles of incorporation or bylaws, the members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member.

Other organizational and clarifying revisions are made, such as using the term "board committees" to refer to committees of directors.

Committees of the Board of Directors—Nonprofit, Mutual, and Miscellaneous Corporations.
The requirement that a committee established by the board of directors must have at least two members is removed, and instead a committee of the board must consist of one or more directors.

Share Options.

In addition to rights, options, or warrants for the purchase of shares, a corporation may issue rights, options, or warrants for the purchase of other securities of the corporation. The authorization by the board of directors to issue such rights, options, or warrants constitutes authorization of the issuance of shares or other securities for which the rights, options, or warrants are exercisable.

Provisions related to terms and conditions that may invalidate, or preclude or limit the exercise of the options, rights, or warrants are reorganized into subsections for clarity. Additionally, it is specified that the terms and conditions may invalidate, void, or preclude or limit the exercise of the options, rights, or warrants by any person owning or offering to acquire shares or other securities of the corporation, or by any transferee of any such person.

Provisions that permit the board to delegate to officers the authority to issue shares and to designate recipients of rights, options, warrants or other equity awards are relocated from the statute that addresses board committees to the statute governing share options. It is additionally specified that the officer to whom the board delegates this authority may not designate as a recipient the officer or any other person specified by the board.

Share Exchanges.

It is clarified that when a share exchange becomes effective, it is the former holders of the acquired entity's shares (and not the shares) who are entitled to the rights provided to them in the plan of share exchange or to any dissenters' rights under the WBCA.

Dissenters' Rights.

Conversion of a corporation to another entity that is not a foreign corporation is added to the list

of corporate actions that trigger the right of a shareholder to dissent from the action and to obtain payment of the fair value of the shareholder's shares.

Dissolution by the Board of Directors and Shareholders.

The statutory requirement that a dissolution proposal be approved by two-thirds of the votes is retained in substance, with some organizational revisions, and is made applicable to corporations formed before August 1, 2024.

With respect to corporations formed on or after August 1, 2024, the statutory voting threshold is lowered, and a dissolution proposal must be approved by a majority of the votes entitled to be cast and of each other voting group entitled to vote separately on the proposed dissolution. The articles of incorporation or the board of directors, when setting conditions on its submission of the dissolution proposal to shareholders, may require a greater vote.

Appropriation: None.

Fiscal Note: Not requested.

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