

SENATE BILL REPORT

SB 5006

As Passed Senate, February 5, 2025

Title: An act relating to making updates to Washington's corporation acts.

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

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

Brief History:

Committee Activity: Law & Justice: 1/14/25, 1/16/25 [DP].

Floor Activity: Passed Senate: 2/5/25, 49-0.

Brief Summary of Bill

- Modifies the composition, powers, and limitations of corporate and nonprofit board committees.
- Clarifies issuance of shares procedures, rights of former holders of shares exchanged in share exchanges, dissenters' rights during a conversion of a corporation, and voting thresholds in corporate dissolutions.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Holy, Ranking Member; Fortunato, Lovick, Salomon, Torres, Valdez and Wagoner.

Staff: Ryan Giannini (786-7285)

Background: The Washington Business Corporations Act. The Washington Business Corporation Act (WBCA) provides requirements for creating, organizing, and operating

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corporations and the relationship between shareholders, directors, and officers of the corporation.

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

Corporate and Nonprofit Board Committees. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may establish one or more committees of two or more directors. Corporate and nonprofit board committees (board committees) may exercise the authority of the board of directors to the extent specified by the board of directors, or in the articles of incorporation or bylaws. Board committees may not take certain actions, such as amending the articles of incorporation or approving a plan of merger not requiring shareholder approval.

Shares. A corporation may issue rights, options, or warrants for the purchase of the corporation's shares and may adopt different preferences or limitations for such shares. The board of directors determines the terms under which the options, rights, and warrants may be issued.

Share Exchange. A share exchange is a transaction in which the acquiring entity acquires all the shares or eligible interests of one or more classes or series of shares or eligible interests of the acquired entity. A share exchange allows a corporate combination so the separate existence of one or more parties to the combination does not cease, although another corporation or other entity obtains ownership of the shares or interests of those parties.

Dissenters' Rights. Mergers and other significant corporate actions typically require shareholders to authorize the proposed action by voting their approval. When a corporation goes through a fundamental change, such as a sale or merger, a shareholder who votes against the proposed action, but on the losing side, is entitled to dissent from the action. Dissenters may have the right to be compensated by the corporation for the fair value of the shareholder's shares.

Dissolution. The WBCA governs how a corporation may be dissolved and liquidated. Corporations may be dissolved either voluntarily, administratively, or judicially.

Summary of Bill: Corporate and Nonprofit Board Committees. Board committees may consist of one or more directors. Corporate boards and, if authorized, corporate board committee members, may appoint another director to act in place of an absent or disqualified committee member. Limitations on corporate board committee actions

regarding amending articles of incorporation and approving a plan of merger not requiring shareholder approval are removed.

Shares. Shares or other securities are considered authorized to be issued if the board of directors authorizes the corporation to issue rights, options, or warrants for the purchase of such shares or other securities.

The terms and conditions of rights, options, or warrants for the purchase of shares or other securities may include restrictions or conditions that preclude or limit the exercise, transfer, or receipt by, or invalidate or void, any rights, options, or warrants held by any person(s) or transferee(s) of such person(s).

The board of directors may authorize one or more officers to designate the recipients, number, and terms and conditions of rights, options, warrants, or other equity awards that involve the issuance of shares. An officer may not designate the officer, or any other person specified by the board of directors, as a recipient.

Share Exchanges. It is clarified that former holders of shares exchanged in a share exchange transaction are entitled only to the rights provided to them in the plan of share exchange or as dissenters' rights.

Dissenters' Rights. Conversion of a Washington corporation to another entity which is not a foreign corporation will trigger dissenters' rights.

Dissolution. A dissolution proposal is approved if the following percentage of shareholders entitled to vote on the proposal and each other voting group entitled to vote approve the dissolution, unless the article of incorporation requires a different vote for corporations formed:

- prior to August 1, 2024, two-thirds of shareholders; and
- on or after August 1, 2024, a majority of shareholders.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: CARC gets together every year to bring a bill that makes sure Washington's Business Corporation Act is among the best in the country. This bill streamlines board committee requirements by allowing board of directors to set up committees of one director. This will allow small, private companies to act quickly and will bring the law in line with virtually all other states. A lot of protections are still retained as

there are certain instances where two directors are still required. The second part of this bill involve clean-up changes related to last year's CARC recommendations.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Michael Hutchings, WSBA Corporate Act Revision Committee.

Persons Signed In To Testify But Not Testifying: No one.