HOUSE BILL REPORT
SSB 5107

As Passed House
April 8, 1997

Title: An act relating to consent provisions under the Washington business corporation act.

Brief Description: Modifying consent provisions under the Washington business corporation act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Roach and Johnson).

Brief History:
Committee Activity:
Law & Justice: 3/25/97 [DP].
Floor Activity:
Passed House: 4/8/97, 95-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Lambert; Lantz; Radcliff and Sherstad.

Staff: Trudes Hutcheson (786-7384).

Background: The Washington Business Corporations Act (WBCA) governs, among other things, the rights of shareholders and certain transactions of corporations.

Shareholder Action By Consent: The statutes provide that any action which shareholders may take at a meeting may be taken without a meeting if all the shareholders who would be entitled to vote on the action at the meeting consent to the action. The action must be evidenced by one or more written consents describing the action and signed by all shareholders entitled to vote on the action, and the written consents must be delivered to the corporation. The action becomes effective when all the signed consents are in the possession of the corporation, unless the written consents specify a later date.

Significant Business Transactions: The WBCA places restrictions on the types of transactions a Washington corporation or foreign corporation with significant ties in Washington can engage in with a shareholder who has acquired 10 percent or more of the outstanding voting shares of the corporation. Generally, a target corporation may not enter into a significant business transaction– with an acquiring person– within five years of the date the person became an acquiring person, unless the significant business transaction or the acquisition by the acquiring person is approved in advance by a majority of the target corporation's board of directors. A significant business transaction– includes, for example, a merger, consolidation, dissolution, liquidation, or termination of 5 percent or more of the employees of the target corporation. In addition, the target corporation is prohibited from engaging in a significant business transaction with an acquiring person at any time, unless the transaction meets certain criteria, mainly that the transaction results in shareholders receiving a fair price for their shares.

Summary of Bill: The WBCA is amended to allow action to be taken by less than a unanimous consent of shareholders and to clarify when a target corporation may engage in a significant business transaction.

Shareholder Action By Consent: Actions required or permitted to be taken at a shareholders' meeting may be taken without a meeting or a vote if (1) the action is taken by the number of shareholders entitled to vote in the aggregate that is not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting where all shares entitled to vote on the action were present and voted. (b) at the time the action is taken, the corporation is not a public company; and (c) the articles of incorporation authorize taking action by non-unanimous consent of the shareholders.

The action must be evidenced by written consents signed by the sufficient number of shareholders necessary to take action, and the written consents must be delivered to the corporation. The action is not effective until consents sufficient to authorize the action have been delivered to the corporation and appropriate notice is given to the non-consenting shareholders. The sufficient number of consents necessary to take the action must be delivered to the corporation within 60 days of the earliest dated consent that was delivered to the corporation.

Significant Business Transactions: The statute is clarified to provide that, regardless of any other provision, a corporation cannot engage in a significant business transaction with an acquiring person within five years of the person becoming an acquiring person unless the board of directors approves in advance the significant business transaction or the acquisition. After the five-year period, a corporation cannot engage in certain significant business transactions involving mergers, liquidations, share exchanges, and other price-related transactions with the acquiring person unless the transaction (a) meets the fair price provisions, or (b) is approved by the shareholders.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill allows for non-unanimous consent of shareholders for corporate actions. Sometimes corporations need to take action quickly, and this consent provision gives certain corporations that option. Allowing non-unanimous consent is consistent with the trend in other states. The second part of the bill is just a cleanup of the existing statutes.

Testimony Against: None.

Testified: John Steel, Washington State Bar Association, Corporate Act Committee.