

SENATE BILL REPORT

SB 5123

As Passed Senate, March 6, 2003

Title: An act relating to the Washington business corporation act.

Brief Description: Revising the Washington business corporation act.

Sponsors: Senators Johnson, Kline and Esser.

Brief History:

Committee Activity: Judiciary: 2/12/03, 2/13/03 [DP].

Passed Senate: 3/6/03, 46-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Johnson, Kline and Thibaudeau.

Staff: Jinnah Rose-McFadden (786-7421)

Background: The Washington Business Corporations Act provides a legal framework for the creation, organization, and dissolution of corporations incorporated in Washington State. Washington's law requires corporations to file articles of incorporation; statutory guidelines require that articles enumerate rules governing the sale of corporate shares and the rights of shareholders, including shareholders' voting group rights.

Summary of Bill: Changes are made to the Washington Business Corporations Act in two distinct areas. State information requirements are changed to conform to recently adopted Securities and Exchange Commission requirements. Where shareholders expressly consent in advance to being treated as members of a household, corporations may send a single copy of shareholder materials to several shareholders who have the same address.

Shareholder voting group provisions are clarified and streamlined. Changes include:

- Allowing a board of directors to approve amendments to articles of incorporation affecting reverse stock splits.
- Changing rules governing group voting on amendments to articles of incorporation:
 - (a) limiting group voting to groups of shareholders that could be adversely affected by the amendment;
 - (b) clarifying that the entire class or series may vote where an amendment will result in a cash-out, of part or all, of the shares of that class or series;
 - (c) clarifying that only groups of shareholders formally authorized as classes or designated as series in the articles of incorporation may vote in groups;
 - (d) clarifying that similarly affected classes and series should be combined into a single

voting group; and (e) clarifying that corporations may limit or deny group voting rights, if so stated in the articles of incorporation.

- Clarifying rules governing group voting on mergers and share exchanges: (a) the rights of a group to vote on a merger or share exchange is no longer predicated on whether voting would be required if the same provisions were effected through an amendment to the articles of incorporation; (b) a group may vote on a share exchange plan in the same circumstances as they would be entitled to vote on a merger plan; and (c) a new section is created describing the specific circumstances in which shareholders voting on a plan of merger or share exchange will require separate voting group rights.
- Allowing a shareholder whose relationship to the corporation is being terminated, via an amendment to the articles of incorporation, to continue to have a right to dissent and seek appraisal.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: For some time, there has been fear among corporate attorneys that confusing language in the Business Corporations Act was leading to unwitting acts of malpractice. In response, the Corporations Act Review Committee, a subcommittee of the Washington State Bar, was convened to study this issue. Over the past two years, the committee has worked on revising the act to clarify confusing provisions.

Testimony Against: None.

Testified: PRO: John Steel.