

SENATE BILL REPORT

HB 1042

As Reported By Senate Committee On:
Judiciary, March 23, 2007

Title: An act relating to business transactions.

Brief Description: Modifying the share acquisition time period for engaging in a significant business transaction.

Sponsors: Representatives Rodne, Pedersen, Moeller and Lantz.

Brief History: Passed House: 1/29/07, 97-0.

Committee Activity: Judiciary: 3/23/07 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Dawn Noel (786-7472)

Background: Washington's Business Corporation Act contains restrictions on the hostile takeover of Washington corporations and foreign corporations with substantial economic ties to Washington.

Generally, when a person acquires 10 percent or more of the outstanding voting shares of a target corporation, the target corporation is prohibited, for a period of five years following the acquiring person's share acquisition, from engaging in a "significant business transaction" with the acquiring person unless certain exemptions apply.

The primary exemption to the five-year prohibition is if the board of directors of the target corporation either approved the significant business transaction before the acquiring person's share acquisition or approved of the acquiring person's purchase of shares before the share acquisition.

"Significant business transaction" includes, for example, a merger of the target company with the acquiring person, the substantial sale of the target corporation's assets to the acquiring person, a significant change in the target corporation's employment personnel, and the liquidation or dissolution of a target corporation proposed by the acquiring person. "Person" includes an individual, corporation, or other business entity.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Corporate Act Revision Committee of the Washington State Bar Association conducted a year-long study of Washington's anti-takeover law compared to other states' laws. Other states, including Delaware, allow a target corporation to engage in a significant business transaction with the acquiring person before the expiration of its "freeze-out" period if the majority of the board of directors and a supermajority of the shareholders approve.

Summary of Bill: An exemption is added to Washington's anti-takeover statute. A corporation may engage in a significant business transaction with an acquiring person at the time of or after the person's share acquisition, and notwithstanding the five-year bar, if the significant business transaction is: (1) approved by a majority of the board of directors; and (2) authorized, at an annual or special shareholder meeting, by at least two-thirds of the outstanding voting shares, not including the acquiring person's voting shares. The shareholders' authorization may not be by written consent.

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 bill creates a fairly narrow exception to the current statute. When Washington adopted this statute, it was fairly mainstream, in that 37 to 38 states adopted similar legislation at the time. The Washington act is now a little different, in that it contains an absolute bar. If someone becomes an acquiring person without the board's approval, you can't do a transaction for five years, even if the company and the acquiring person want to do a transaction. This bill changes Washington law so that it is similar to other states that allow cure after the fact. This bill strikes a nice balance in maintaining protection for Washington companies, but if a majority of board members and a supermajority of shareholders excluding the interested person want to do it, they have the ability to do it.

Persons Testifying: PRO: Kent Carlson, Washington State Bar Association, Corporate Act Revision Committee.