SENATE BILL REPORT
SB 5495

As of February 15, 2011

Title: An act relating to shareholder quorum and voting requirements under the Washington business corporation act.

Brief Description: Addressing shareholder quorum and voting requirements under the Washington business corporation act.

Sponsors: Senators Kohl-Welles and Pflug.

Brief History:
Committee Activity: Judiciary: 2/11/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

Background: The Washington Business Corporations Act (WBCA) provides default rules with respect to quorum and voting requirements for corporate actions. A corporation may alter these requirements in its articles of incorporation as long as the altered quorum and voting requirements meet certain minimum standards in the WBCA.

In some instances, a voting group representing a particular class or series of shares may be entitled to vote separately on proposed corporate actions. When separate voting by voting groups is required, quorum and voting requirements must be met for the voting group representing all shares entitled to vote on the action, as well as for each voting group entitled to vote separately on the action.

Quorum Requirements. The WBCA provides that a majority of the votes entitled to be cast on an action represents a quorum. The articles of incorporation may provide for a greater or lesser quorum requirement as long as it is not less than one-third of votes entitled to be cast on the action.

Voting Requirements. Generally the WBCA provides that if a quorum exists, corporate action is approved if the votes approving the corporate action exceed the votes opposing the corporate action, unless the articles require a greater voting requirement.

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.

However, there are a number of corporate actions that may be taken by the board of directors only upon approval of the shareholders, and approval of these actions is subject to different voting requirements. These actions include amendments to some provisions of the articles of incorporation; mergers or share exchanges; the sale of the assets of the corporation other than in the regular course of business; and dissolution of the corporation. With respect to these actions, the WBCA generally requires the action to be approved by two-thirds of the votes entitled to be cast. The articles of incorporation may require a greater or lesser voting requirement as long as the voting requirement is not less than a majority of all votes entitled to be cast on the action.

Summary of Bill: The WBCA is amended to establish alternative shareholder quorum and voting requirements that are applicable to corporations that have foreign shareholders and meet other specified criteria.

Alternative Quorum Requirements. The required quorum of the voting group consisting of all shares entitled to be cast, and of each voting group entitled to vote separately on the action, is the lesser of:

- a majority of the shares other than shares credited to stock depositories located in a member state of the European Union, as long as this majority equals or exceeds one-sixth of the total votes entitled to be cast by the voting group; or
- one-third of the total votes entitled to be cast by the voting group.

Alternative Voting Requirements. The vote required for approval by any voting group entitled to vote on the corporate action is a majority of the votes actually cast by the voting group, as long as the votes approving the action equal or exceed 15 percent of the votes within the voting group.

This alternative voting requirement applies to the following corporate actions: amendment of the articles of incorporation or bylaws; plan of merger or share exchange; disposition of all or substantially all of the corporation's property not in the usual and regular course of business; and dissolution.

Criteria for Alternative Quorum and Voting Requirements. A corporation must meet all of the following requirements in order to be subject to the alternative shareholder quorum and voting requirements:

- As of the record date of the annual or special meeting of shareholders, the corporation is a public company, shares of its common stock are listed on a European Union regulated market, and at least 20 percent of the corporation's shares are credited to the accounts of stock depositories located in a member state of the European Union.
- At the time such shares were initially listed on the European Union regulated market, the corporation's shares were listed on the New York Stock Exchange or the NASDAQ Stock Market.
- The listing of shares on the European Union regulated market was a condition to the acquisition of 100 percent of the equity interests of a foreign corporation and certain other conditions relating to the acquisition are met.
- At the corporation's most recent annual or special meeting less than 65 percent of the shares within the voting group comprising all the votes entitled to be cast were present in person or by proxy.

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: Cell Therapuetics (CTI) is a public bio-pharmaceutical research-based company headquartered in Seattle. In 2004 CTI merged with an Italian cancer research company. Part of the merger agreement required that CTI shares remain on the Italian stock exchange as well as the NASDAQ. Under Italian privacy laws, companies cannot know who holds their shares. Italian shares of CTI are held in Italian banks, and companies must rely on the banks to provide notice of elections and proxy materials to the shareholders. There is a cultural difference between the U.S. and Italy in stockholder privacy and participation. In the last three years, a significant migration of CTI stock has led to a majority of shares being held in Italian and European banks, and CTI cannot even send notice of a shareholder meeting to its own shareholders. This past year the company held three special meetings, all of which failed to get sufficient votes to pass key business items to allow the companies research activities to continue. Finally at an annual meeting, we were able to get sufficient participation to meet minimum quorum and voting thresholds, but it took over nine months and millions of dollars in legal and proxy expenses to accomplish. We've looked at other ways to deal with this problem, but feel that a change in Washington law, that is very narrowly crafted to only apply to companies in our situation, is the best solution for our company to move forward.

It is both necessary and appropriate to add an emergency clause given the business decisions that face the company in the immediate future.

Persons Testifying: PRO: Denny Eliason, James Bianco, Cell Therapeutics; William Gleeson, H & L Gates.