

HOUSE BILL REPORT

HB 1148

As Passed House:
February 27, 2013

Title: An act relating to dissenters' rights under the Washington business corporation act.

Brief Description: Addressing dissenters' rights under the Washington business corporation act.

Sponsors: Representatives Pedersen, Rodne, Goodman and Ryu; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Judiciary: 1/29/13, 2/5/13 [DP].

Floor Activity:

Passed House: 2/27/13, 97-0.

Brief Summary of Bill

- Amends language in the Washington Business Corporation Act (WBCA) regarding circumstances that give rise to dissenters' rights and notices required when such rights are triggered.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Cece Clynch (786-7195).

Background:

Dissenters' Rights Under the Washington Business Corporation Act.

The Washington Business Corporation Act (WBCA) codifies requirements for the creation, organization, and operation of corporations and the relationship between the corporation's directors, officers, and shareholders. For purposes of the WBCA, "corporation" is defined as

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a "corporation for profit, including a social purpose corporation, which is not a foreign corporation, incorporated under or subject to the provisions of the [WBCA]."

The WBCA includes a chapter governing dissenters' rights. This chapter specifies the types of transactions and corporate actions that trigger dissenters' rights. The chapter also sets forth notice requirements to be followed by the corporation and dissenting shareholders.

Actions Which Trigger Dissenters' Rights.

A shareholder is entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of any one of the following corporate actions:

1. A plan of merger, to which the corporation is a party, if:
 - a. shareholder approval of the merger was required *and* the shareholder was entitled to vote on the merger; *or*
 - b. the corporation was a subsidiary that has been merged with its parent and the parent owned at least 90 percent of the subsidiary's outstanding shares.
2. A plan of share exchange in which the corporation's shares have been acquired, if the shareholder was entitled to vote on the plan.
3. A sale or exchange of substantially all of the corporation's property (other than in the usual and regular course of business), if the shareholder was entitled to vote on the sale or exchange.

This includes a sale in dissolution but not a sale pursuant to court order or a sale for cash pursuant to a plan in which the net proceeds of the sale are to be distributed within the next year.

4. An amendment of the corporation's articles of incorporation (whether or not the shareholder was entitled to vote), if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration (other than shares).
5. Any action that triggers dissenters' rights pursuant to specific provisions of the corporation's articles of incorporation, bylaws, or corporate resolution.

Notice Required When Dissenters' Rights Triggered.

In the event of certain, specified corporate actions triggering dissenters' rights, the corporation must deliver a notice to all shareholders that:

- states where the payment demand must be sent and where and when share certificates must be deposited;
- informs holders of uncertificated shares to what extent transfer of shares will be restricted after the payment demand is received;
- supplies a form for demanding payment;
- sets a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the notice is delivered; and
- is accompanied by a copy of the WBCA chapter governing dissenters' rights.

Recent Legislative Changes to the WBCA.

In 2009, by request of the Washington State Bar Association (WSBA), amendments to the WBCA were made governing corporate action taken without a shareholders' meeting or vote.

In 2012, also at the request of the WSBA, a new type of corporate business model was established under the WBCA, the "social purpose corporation." Pursuant to this chapter, a

shareholder is entitled to dissent from, and obtain payment of the fair value of his or her shares, in the event of:

- an election by a corporation to become a social purpose corporation if shareholder approval for such a change was required;
- an election to cease to be a social purpose corporation, if shareholder approval was required and the shareholder was entitled to vote; and
- an amendment to the articles of incorporation that would materially change one or more of the social purposes of the corporation.

Summary of Bill:

Past tense language ("that has been merged") is stricken and this provision regarding dissenters' rights in the event of a subsidiary's merger with its parent is amended to make clear that the corporate action approving the merger, and not the occurrence of the merger, is what triggers the notice provisions. In the event of a subsidiary's merger with its parent, where the plan of merger provided for the merger of the subsidiary, notice must be delivered to all shareholders of the subsidiary (other than the parent) within 10 days of the effective date of the corporate action.

Specific reference is made in the dissenters' rights chapter to those circumstances that trigger dissenters' rights with respect to a social purpose corporation.

Language is added specifically requiring notice in the following circumstance:

- In the case of an amendment of a corporation's articles of incorporation that effects a reverse split of the corporations' sole class of outstanding shares and the number of authorized shares of that class in the same proportions, that is not required to be approved by shareholders, and that effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or consideration other than shares, the corporation must deliver notice, within 10 days, to all shareholders entitled to dissent.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Corporations Act Revisions Committee of the Business Law Section of the WSBA works all year trying to keep the WBCA up-to-date. There are two circumstances in which corporations may take actions on which shareholders do not get to vote. These shareholders still have dissenters' rights, however. This bill deals with notice requirements when dissenters' rights are triggered. Amendments made in 2009 removed oblique references to procedural provisions for notices in situations where the corporate action does not require shareholder approval. These amendments are really technical fixes. There are two non-substantive changes, one making a wording change for purposes of clarity and the other adding "social purpose corporations" to the list. The change in section 1(1)(a) concerns a

timing issue. Dissenters' rights, and notice provisions related thereto, are triggered by the approval of the plan of merger rather than the merger.

(Opposed) None.

Persons Testifying: Representative Pedersen, prime sponsor; and Michael Hutchings, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.