

HOUSE BILL REPORT

SB 6205

As Reported by House Committee On:
Judiciary

Title: An act relating to clarifying when a person is an acquiring person of a target corporation with more than one class of voting stock.

Brief Description: Clarifying when a person is an acquiring person of a target corporation with more than one class of voting stock.

Sponsors: Senators Pedersen, O'Ban, Frockt and Fain; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Judiciary: 2/23/16, 2/26/16 [DP].

Brief Summary of Bill

- Amends the anti-takeover statute in the Washington Business Corporation Act to use the concept of voting power as the measure for determining when a person becomes an acquiring person or meets other thresholds established in the anti-takeover statute.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Kuderer, Muri and Orwall.

Minority Report: Do not pass. Signed by 1 member: Representative Stokesbary.

Staff: Edie Adams (786-7180).

Background:

The Washington Business Corporation Act (WBCA) contains provisions intended to deter or prevent the hostile takeover of Washington corporations and foreign corporations that have

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substantial economic ties to Washington. The anti-takeover statute generally prohibits a target corporation from engaging in certain significant business transactions with an acquiring person for a period of five years. A significant business transaction includes, for example, a merger or consolidation of the target corporation with the acquiring person, the substantial sale of the target corporation's assets to the acquiring person, the termination of 5 percent or more of the Washington employees of the target corporation, and the liquidation or dissolution of a target corporation proposed by the acquiring person.

A person becomes an "acquiring person," thus triggering the moratorium on significant business transactions, when the person obtains 10 percent or more of the outstanding voting shares of the target corporation. "Voting shares" means the shares of a corporation entitled to vote generally in the election of directors.

A corporation may issue different classes of shares such as voting and nonvoting shares, and preferred and common shares. Different classes of shares may have different voting rights. A corporation's articles of incorporation must set forth the classes or series of shares and the number of shares of each class that may be issued. If more than one class of shares is authorized, the articles must give each class a distinguishing designation and set forth the preferences, limitations, voting powers, and relative rights of each class.

Summary of Bill:

The anti-takeover statute in the WBCA is revised to incorporate the concept of "voting power," instead of "voting shares," in determining whether a person becomes an "acquiring person" or meets other thresholds established in the anti-takeover statute. An "acquiring person" is a person who is the beneficial owner of voting shares entitled to cast votes comprising 10 percent or more of the voting power of the target corporation. "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation.

The definition of "beneficial ownership" with respect to shares is restructured and renamed "beneficial owner," and is revised to specifically indicate the term includes a person who, directly or indirectly, has or shares the power to vote or dispose of the shares, or direct the voting or disposition of the shares. The terms "beneficial ownership," "beneficially own," and "beneficially owned" have correlative meanings.

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) This bill is a product of the work of the Corporate Act Revision Committee (CARC), which has faithfully tended the WBCA. It is the mission of the CARC to consider changes to the WBCA in light of developments across the country in corporate and securities laws. The WBCA is probably the best-kept chapter in the entire RCW. The CARC makes sure the statute stays up-to-date, and as a result, Washington is unusual in that a lot of Washington companies are organized in-state rather than in Delaware.

Since the enactment of the anti-takeover statute in 1989, there has been a dramatic shift in how companies are structured. It is not uncommon now for corporations to have different classes of common shares or preferred shares. The use of these dual-class stocks enables people to get around the purpose of the anti-takeover statute. The bill brings the anti-takeover statute up-to-date with how corporations are currently setting up their capital structure. This change brings Washington in line with the majority of states that have moratorium-type anti-takeover statutes. The bill has been widely vetted with a variety of stakeholders and no concerns have been raised.

(Opposed) None.

Persons Testifying: Senator Pederson, prime sponsor; and Michael Hutchings, Washington State Bar Association's Business Law Section.

Persons Signed In To Testify But Not Testifying: None.