

# SENATE BILL REPORT

## SB 6205

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As Reported by Senate Committee On:  
Law & Justice, February 1, 2016

**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:** Law & Justice: 1/21/16, 2/01/16 [DP].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt, Pearson and Roach.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** State laws are permitted to regulate corporate mergers and acquisitions within the bounds of the Constitution and controlling federal laws. In a corporate merger or acquisition, a target corporation is the subject of the merger or acquisition effort. An acquiring person is one or more persons outside the target corporation who acquire beneficial ownership of the target corporation's shares to facilitate the merger or acquisition. Chapter 23B.19 RCW limits potential hostile corporate takeovers of Washington corporations or foreign corporations having substantial business ties to Washington State, subject to certain exemptions outlined in RCW 23B.19.030.

**Summary of Bill:** An "acquiring person" now includes beneficial ownership of 10 percent or more of the voting power of the target corporation to address target corporations having more than one class of voting stock. An acquiring person is a "beneficial owner" of shares when that person, individually or with others, and whether directly or indirectly, has power to vote or direct the vote of the shares, dispose of the shares, or acquire the shares now or at a future time. "Voting shares" include all classes of shares entitled to vote to elect the target

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corporation's directors. "Voting power" is the total number of votes cast by all of the target corporation's outstanding voting shares.

**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: This bill is needed because some are using the structure of preferred stock to get around the anti-takeover protections in RCW 23B.19. The key change in this bill is using voting power as a threshold for identifying who may be an acquiring person under the law. Preferred stock or dual class common stock could be a vehicle to avoid the anti-takeover protections in the law because the stock classes can be structured to concentrate votes in one class, for example, 1 class of common stock could have 1 vote per share and a different class of common stock, or preferred stock could have 10 votes per share. Voting power is critical to controlling the decision making authority of a corporation and the composition of its board of directors. This bill closes the loophole that undercuts the purpose of the law by concentrating control in an acquiring person who then would not need to negotiate with the target corporation's board over share prices. The bill also provides clear guidance to lawyers so that they will know when the protections of the laws are triggered with dual class stocks. This bill has broad support among members of the bar who are interested in this subject. The bill has no fiscal impact and no negative impact on current corporation shareholders.

**Persons Testifying:** PRO: Senator Pedersen, prime sponsor, Michael Hutchings, WSBA business law section.

**Persons Signed In to Testify But Not Testifying:** No one.