

HOUSE BILL REPORT

SSB 5786

As Passed House:
February 27, 2024

Title: An act relating to making updates to the Washington business corporation act.

Brief Description: Making updates to the Washington business corporation act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Padden, Mullet, Nobles and Salomon; by request of Washington State Bar Association).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/16/24, 2/20/24 [DP].

Floor Activity:

Passed House: 2/27/24, 94-0.

Brief Summary of Substitute Bill

- Replaces the chapter on mergers and share exchanges in the Washington Business Corporation Act (WBCA) with a new chapter that substantially mirrors provisions in the current version of the Model Business Corporation Act (MBCA).
- Makes various changes to definitions and quorum, voting, and shareholder approval requirements to conform the WBCA with the MBCA.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Taylor, Chair; Farivar, Vice Chair; Abbarno, Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

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

Staff: Matt Sterling (786-7289).

Background:

Washington Business Corporation Act.

The Washington Business Corporation Act (WBCA) provides requirements for creating, organizing, and operating corporations and for the relationship between shareholders, directors, and officers of the corporation. The WBCA provides default rules for many provisions that may be altered in the corporation's articles of incorporation or bylaws. The articles of incorporation and the bylaws are the governing documents for the corporation and set forth rules for numerous organizational and operational issues.

The WBCA is modeled largely after the American Bar Association's revised Model Business Corporation Act (MBCA). The Corporate Act Revision Committee of the Business Law Section of the Washington State Bar Association periodically reviews the WBCA and makes recommendations to update the WBCA.

Mergers and Share Exchanges.

A merger is the traditional form for combining entities by operation of law. In a merger, a domestic business corporation may merge with one or more entities. The entity resulting from the merger may be one of the parties to the merger, or a new corporation or entity created by the merger.

A share exchange is a transaction in which the acquiring entity acquires all the shares or eligible interests of one or more classes or series of shares or eligible interests of the acquired entity. A share exchange allows a corporate combination so the separate existence of one or more parties to the combination does not cease, although another corporation or other entity obtains ownership of the shares or interests of those parties. The default requirement for shareholder approval for a plan of merger or share exchange is two-thirds of the outstanding shares.

Summary of Bill:

Mergers and Share Exchanges.

Authorization for Mergers. Domestic corporations are authorized to merge with each other or other entities. Mergers must be in accordance with a plan of merger. A plan of merger may be amended with the consent of the parties to the merger, and there are additional requirements for amendments to a plan of merger previously approved by a party's shareholders. A corporation's articles of incorporation or public organic record may be amended by a merger.

Authorization for Share Exchanges. An acquiring entity is authorized to acquire all the shares or eligible interests of one or more classes or series of shares of an acquired entity. Share exchanges must be in accordance with a plan of share exchange. A plan of share

exchange may be amended with the consent of the parties to the share exchange.

Approval Requirements for Mergers or Share Exchanges. A plan of merger or share exchange must be approved by a domestic corporation's board of directors. Subject to certain exceptions, a plan of merger must be approved by the shareholders of a domestic corporation that is a party to a merger, and a plan of share exchange must be approved by shareholders of the class or series being acquired in a share exchange. If approval by the shareholders is required and such approval will occur at a meeting, a notice of a meeting is required to be sent to all shareholders. A copy or summary of the articles of incorporation and bylaws of a surviving domestic corporation or the organic rules of a surviving other entity must be included in the notice.

Domestic corporations may approve a plan of merger or share exchange with the approval of the following percentage of shareholders of each voting group entitled to vote, unless the article of incorporation requires a different vote for corporations formed:

- prior to August 1, 2024, two-thirds of shareholders; and
- on or after August 1, 2024, a majority of shareholders.

If shareholders are subject to new owner liability as a result of a merger or share exchange, approval of a plan of merger or share exchange requires the express written consent of each shareholder to become subject to the new owner liability, except when a shareholder already has substantially identical owner liability for a domestic corporation. A domestic parent corporation that owns at least 90 percent of a subsidiary may merge with a subsidiary without approval of the board of directors or shareholders of the subsidiary corporation.

Group Voting. Separate group voting is required on a plan of merger if shares would be converted under the plan into shares, other securities, interests, or any other consideration. Separate group voting is required on a plan of share exchange by each class or series of shares included in the exchange. Separate group voting rights may be allowed, limited, or eliminated by the articles of incorporation.

Finalizing Mergers and Share Exchanges. After a plan of merger or share exchange is approved, articles of merger or share exchange must be executed by each entity. The articles of merger and share exchange are effective on the date and at the time of filing, unless a later effective date is specified in the articles within 90 days after the date an article is filed. A domestic corporation may abandon a merger or share exchange without shareholder approval, prior to the merger or share exchange becoming effective.

Effects of Mergers and Share Exchanges. The parties that merge become one, and the surviving entity becomes the owner of all:

- property and contract rights;
- privileges and immunities; and
- the liabilities of each other party to the merger.

All pending proceedings involving either party to the merger are continued. Shares or interests in each entity that is a party to the merger are converted in accordance with the terms of the merger. When a share exchange becomes effective, shares or interests in the acquired entity to be exchanged for shares, other securities, interests, or any other consideration are entitled to the rights provided to them in the plan of share exchange or any other applicable law.

Miscellaneous Changes to the Washington Business Corporation Act.

Definitions. Definitions applicable to the entire WBCA are provided.

Quorum and Voting. Whenever the WBCA requires a particular quorum for a specified corporate action, the articles of incorporation may not provide for a lower quorum. Voting by separate voting groups is governed by rules for amendments of the article of incorporation. Amendments to the articles of incorporation that change a quorum or voting requirement must meet the same quorum requirement and be approved by the same vote and voting group required to take action under the requirements then in effect or proposed to be approved, whichever is greater.

Approval of Amendments, Conversion, and Disposition of Property. A plan of entity conversion must be approved by shareholders that would be required to approve a plan of merger and separate voting groups, unless the articles of incorporation or board of directors requires a greater vote. Disposition of a corporation's property and amendments to a corporation's articles of incorporation follow a similar procedure as approval of a plan of merger or share exchange, except for public companies formed prior to August 1, 2024, which may approve an amendment to the articles of incorporation by a majority vote of shareholders of each voting group entitled to vote.

Social Purpose Corporation. A corporation may become a social purpose corporation in accordance with a plan of election. A plan of election must include an amendment to the articles of incorporation and be approved by the board of directors and at least a two-thirds vote of shareholders of each voting group entitled to vote, unless the articles of incorporation or board of directors requires a greater vote.

Appropriation: None.

Fiscal Note: Available.

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) For the last 34 years since the enactment of the WBCA, there is a group of volunteer lawyers who make periodic requests for updates to the WBCA, and this bill is the

latest of those requests. The effect of the work is to keep Washington competitive with other states as a place for forming business entities. This bill is an effort to align the WBCA with the current version of the MBCA and is mainly technical improvements. The updates to the mergers and shares chapter do include some changes that are more substantive than bills in the past that updated the WBCA. The changes made in the bill to the voting threshold that would require a simple majority, rather than a supermajority, would only apply to corporations that are formed after August 1, 2024, unless the corporation has lowered the voting threshold in their articles of incorporation.

(Opposed) None.

Persons Testifying: Senator Jamie Pedersen, prime sponsor; and Eric DeJong, Corporate Act Revision Committee of the Washington State Bar Association Business Law Section.

Persons Signed In To Testify But Not Testifying: None.