

HOUSE BILL REPORT

SSB 5495

As Passed House:
April 1, 2011

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

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

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kohl-Welles and Pflug).

Brief History:

Committee Activity:

Judiciary: 3/10/11, 3/17/11 [DP].

Floor Activity:

Passed House: 4/1/11, 91-1.

Brief Summary of Substitute Bill

- Establishes alternative shareholder quorum and voting requirements applicable to corporations that have foreign shareholders and meet other specified criteria.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall and Roberts.

Staff: Edie Adams (786-7180).

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

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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 the 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.

However, there are a number of corporate actions that must be approved by two-thirds of the votes entitled to be cast. 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. 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.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This legislation has been thoroughly vetted with stakeholders. It will address a very unique situation that a local business, Cell Therapeutics, Incorporated (CTI) is experiencing due to the fact that a majority of their shares are held by people in Italy. Because of Italian practices and privacy laws, virtually no shareholders in Italy vote on corporate actions. This has made it impossible for CTI to conduct its business operations. This legislation will allow the company to continue to develop and deploy important cancer treatment drugs.

(Opposed) None.

Persons Testifying: William Gleason, K and L Gates; and Denny Eliason, Cell Therapeutics.

Persons Signed In To Testify But Not Testifying: None.