

WSBA Legislative Review Committee

Proposed Bar-Request Legislation Cover Sheet

Short title of proposal: Proposed revisions to Washington Business Corporation Act (RCW 23B) principally to update provisions regarding committees of the board of directors

Submitted by (Section¹): Corporate Act Revisions Committee (CARC) of the Business Law Section

Designated Section representative and contact information (phone and email):

Michael Hutchings, CARC chair (michael.hutchings@us.dlapiper.com)

Brief summary of bill and anticipated fiscal impact:

The proposed changes would update provisions regarding committees of the board of directors to align more closely with the current version of the Model Business Corporation Act (MBCA) and the Delaware General Corporation Law (DGCL) principally with respect to the limitations to the authority of the board of directors regarding the establishment and governance of board committees. Specifically, the WBCA should be amended to provide the following:

- A board committee may consist of one or more directors;
- The board and, if authorized, committee members, may replace absent or disqualified committee members; and
- The limitations on board committees include only those actions that substantially affect the rights of shareholders or are fundamental to the governance of the corporation.

The proposed changes also include some technical corrections to sections of the WBCA recently adopted or revised.

More detail on the proposed changes is included in CARC's memo to the Committee.

CARC believes there will be no fiscal impact resulting from the proposed changes.

Brief statement of need:

The current WBCA provision regarding committees of the board of directors (RCW 23B.08.250) is based on the 1989 version of the MBCA and has remain largely untouched for more than 30 years. CARC believes the provision should be updated in light of developments in the MBCA and the DGCL, which would also more closely align with evolved corporate practices.

For example, one policy reason for the proposed change to allow board committees to consist of one or more directors is to accommodate situations in which only one director may be present or available to make a decision on short notice, as well as situations in which it is unnecessary or inconvenient to have more than one member on a board committee or where only one board member is disinterested or independent with respect to a matter. We specify elsewhere in the WSBA when it is necessary to have at

¹ For purposes of this document, "Section" means any WSBA Section, Committee, Division, or Council.
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least two qualified directors in order for the decision of the board or committee to have effect (i.e., 08.550 (determination that indemnification is permissible), 08.720 (approval of a director's conflicting interest transaction), and section 08.735 (disclaimer of the corporation's interest in a business opportunity)). It's notable that not only the MBCA, but DE as well provides this committee structure flexibility.

Description of draft development: (please provide detail)

The proposed amendments were drafted by CARC members and presented to the committee for its consideration beginning in 2022. After deliberations and multiple revisions over the course of several months, CARC approved the proposed changes in the summer of 2024. The Executive Committee of the Business Law Section approved the proposed changes in its meeting held on [September 11, 2024].

How does the proposal relate to [GR 12.2](#)? (please explain)

CARC believes the proposal contributes to the WSBA's objective of promoting an effective legal system and allows the Bar to maintain a legislative presence to ensure that the WBCA continues to effectively serve the needs of the state's business community. By aligning more closely with the most current version of the MBCA, Washington business law practitioners and judges can better take advantage of extensive knowledge about how to practice an interpret provisions of the MBCA, as expressed in the official comment to the MBCA, as well as many years of the practical experience, judicial interpretations and commentary from other MBCA jurisdictions.

All proposals must be submitted for comment to your Section's entire membership. Please attach a summary of any feedback received from your Section.

Submittal Status:

1. Has this proposal been submitted to the Committee before? Yes No

(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)

2. If yes, when was this proposal initially submitted to the Committee?

3. Briefly, please provide the following:

(a) What concerns or questions were raised (including requests for additional information) by the Committee previously?

(b) How this proposal addresses those concerns, questions, or additional information requests made by the Committee?

(d) Is there additional information relevant to the status of the proposal?

Summary of Stakeholder Work

*Please describe completed and ongoing activity with internal and external partners

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Referred to:	Feedback: Please include stakeholder positions on the proposal (e.g. support; oppose; concerns; neutral; or no response) and explain.
WA Department of Financial Institutions	No concerns
WA Department of Commerce	No response
Association of Washington Business	No response
WA Department of Licensing	No response
WA Secretary of State's Office Corporations Division	No concerns
WSBA Corporate Counsel Section	No response
WSBA Business Law Section membership	Feedback attached

Summary of Additional Stakeholder Input

*Please describe other anticipated stakeholder feedback regarding the proposal.

See attached feedback from the WSBA Business Law Section membership.

From: [Sanjay Walvekar](#)
To: [Sanjay Walvekar](#)
Subject: FW: [External]Fwd: [business-law-section] Request for Feedback by September 10, 2024
Date: Wednesday, September 18, 2024 1:17:54 PM
Attachments: [image001.png](#)

----- Forwarded message -----

From: **Steen, Andrew** <AndrewSteen@dwt.com>
Date: Tue, Aug 27, 2024 at 11:59 AM
Subject: RE: [business-law-section] Request for Feedback by September 10, 2024
To: Kelly Lawton-Abbott <kelly@ssm.legal>
Cc: michael.hutchings@us.dlapiper.com <michael.hutchings@us.dlapiper.com>

Hi Kelly, thanks for your service! As a former WSBA Business Law Section Chair, I know the drill. I reviewed the doc and noted a typo on the last full paragraph of the summary. Just wanted to call that out. Thanks.

Best,

Drew Steen

Partner, Davis Wright Tremaine LLP

Co-Chair, Corporate and Business Transactions Practice

P 206.757.8081 **E** andrewsteen@dwt.com

A 920 5th Avenue, Suite 3300, Seattle, WA 98104-1610

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From: Lawton-Abbott <kelly@smithshapourian.com>
Sent: Tuesday, August 27, 2024 11:47 AM
To: Business Law Section <business-law-section@list.wsba.org>
Subject: [business-law-section] Request for Feedback by September 10, 2024

[EXTERNAL]

Hello Business Law Members,

I'm writing to you as the Chair of the WSBA Business Law Section. Your feedback is greatly appreciated on an upcoming proposal that we will consider at our September 11, 2024 meeting.

The WSBA Business Law Section will consider a legislative proposal to amend the Washington Business Corporation Act. The feedback received will be shared with the WSBA Legislative Review Committee as they consider this proposal.

More information about each proposal and the WSBA legislative process can be found [here](#).

All feedback is welcome and can be sent to Hutchings, Michael Michael.Hutchings@us.dlapiper.com. Comments are also welcome during the Board meeting on September 11th, which will be held on zoom at noon. Email me at kelly@ssm.legal for the invite. For questions about the Bar-sponsorship process, please reach out to WSBA Legislative Affairs Manager Sanjay Walvekar, sanjayw@wsba.org.

Attached is a redlined version showing the changes compared to the earlier version.

Some of the changes are non-substantive (e.g., grammatical, etc.). But the substantive changes mainly adding a few “clean-up” changes to some other sections along with these proposed changes. They all deal with the changes approved during this year’s legislative session, including (1) specifying that a conversion to a non-corporate entity will trigger dissenters’ rights (which is necessary as the 2024 changes reduced the approval threshold from unanimous to a majority), (2) moving the approval threshold default for dissolutions from 2/3 to majority (which we did for all other fundamental changes in the 2024 changes (e.g., amendments to articles, asset sales, mergers, etc.) but somehow left this one off the list), and (3) fixed some confusing language regarding the effect of a share exchange. We were thinking of dealing with these clean-up changes separately, but after further discussion we think it might be best to deal with them in this same proposal.

Best,
Kelly

Kelly Lawton-Abbott
Partner



Seattle Office - Working Remote
Direct/Cell: (310) 903-6010
Email: kelly@ssm.legal

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From: [Sanjay Walvekar](#)
To: [Sanjay Walvekar](#)
Subject: FW: [External]Fwd: [business-law-section] Request for Feedback by September 10, 2024
Date: Wednesday, September 18, 2024 1:18:17 PM

----- Forwarded message -----

From: David W. Meyer <david.meyer@dwmeyer.com>
Date: Tue, Aug 27, 2024 at 11:57 AM
Subject: RE: [business-law-section] Request for Feedback by September 10, 2024
To: Kelly Lawton-Abbott <kelly@ssm.legal>

The proposed amendments seem prudent and reasonable in light of trends loosening default control thresholds. Good housekeeping.

David W. Meyer, Attorney at Law
900 Washington Street, Suite 800
Vancouver, WA 98660
Phone: (360)952-8033
Fax: (503)459-0516

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From: Lawton-Abbott <kelly@smithshapourian.com>
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To: Business Law Section <business-law-section@list.wsba.org>
Subject: [business-law-section] Request for Feedback by September 10, 2024

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