



New bill gives shareholders veto on board directors

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The federal government has introduced new legislation that would fundamentally change the way corporate directors are elected in Canada, giving shareholders the right to vote against unpopular nominees.

A bill tabled Wednesday in the House of Commons proposes a new voting system that would allow shareholders to cast a ballot either for or against board members at companies that are publicly traded on a stock exchange. Nominees would only be elected if they received a majority of favourable votes, the legislation says.

Under current rules in Canada, shareholders can either vote for directors or withhold their votes, which means the votes are excluded and not counted. The result is that a director can be elected with a single vote, even if all others are withheld.

While Canada and the United States both have the same voting system, most other major countries in the world allow shareholders to vote directly for and against directors, making it easier for investors to oust unpopular directors.

The Canadian Coalition for Good Governance (CCGG), which represents most of Canada's largest pension funds and institutional shareholders, has pressed the government for years to amend the Canada Business Corporations Act (CBCA) to reform the voting rules, arguing the current system is undemocratic and risks making the voting system irrelevant.

CCGG executive director Stephen Erlichman said Thursday it was "wonderful" to see the text of the new bill after "many, many years" of trying to bring majority voting to Canada.

"Under the existing plurality voting system, a director can be elected with just one vote 'for' and it just makes no sense – there's no sense to this current system that we have," Mr. Erlichman said. "Directors shouldn't be elected unless a majority of the shares that are voted want that particular director to be elected."

The act only applies to federally incorporated companies, including those operating in sectors such as transportation and communications, but would not affect many companies that incorporate under provincial statutes, such as the Ontario Business Corporations Act.

According to the federal government, about 40 per cent of Canada's largest publicly traded companies are incorporated under the CBCA.

Mr. Erlichman said he hopes the federal reform will spur provinces to introduce similar amendments to standardize voting rules.

"You've got to start somewhere, and I hope if this makes it past third reading and is enacted, then the provinces will follow and do the same in their corporate statutes," he said.

The new amendments also include a provision that would require companies to report annually on diversity in senior roles. The reporting rules will be defined by further regulations, however, so the details of what companies will have to report are not known yet.

The provision comes two years after provincial securities regulators required companies to report annually on their approach to gender diversity on their boards and among executive officers. However, the federal legislation does not define diversity, and does not specify that gender must be a factor included in reports.

The reform project was launched by the former Conservative government, which asked for public comment in 2014 on proposals to modernize Canada's central piece of business legislation.

Some business groups have opposed changing the shareholder voting system, saying reform was not needed.

Both the Institute of Corporate Directors, which represents 11,000 Canadian board members, and the Business Council of Canada, which represents chief executive officers of major corporations, made separate submissions to Industry Canada arguing new Toronto Stock Exchange rules have already addressed majority voting concerns so further legislation is not needed.

The TSX introduced a listing requirement in 2014 for companies trading on the exchange, saying they must adopt internal majority voting policies requiring directors to tender their resignations to the board if they get a majority of "withhold" votes in annual elections.

The CCGG, however, argued the TSX rule was a workaround to address fundamental flaws in voting legislation in the absence of more substantial reform. Mr. Erlichman said Thursday the TSX rule is only a listing standard so could be changed at any time, while the federal proposals would become law.