

SENATE BILL REPORT

SB 6788

As Reported by Senate Committee On:
Judiciary, February 5, 2010

Title: An act relating to dissolving the assets and affairs of a nonprofit corporation.

Brief Description: Addressing the dissolution of the assets and affairs of a nonprofit corporation.

Sponsors: Senators Brown, Morton, Delvin and Marr.

Brief History:

Committee Activity: Judiciary: 2/02/10, 2/05/10 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6788 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Kim Johnson (786-7472)

Background: The Washington Nonprofit Corporation Act (WNCA) provides for the creation and operation of nonprofit corporations and the relationship between its members, directors, and officers. The WNCA governs how a nonprofit corporation may be dissolved and liquidated. Nonprofit corporations may be dissolved either voluntarily, administratively, or judicially. In certain situations, a nonprofit corporation may be subject to dissolution as the result of proceedings brought by a member or director of the nonprofit corporation, the Attorney General, or a creditor.

In an action by a member, director, or the Attorney General, the superior courts currently have the power to liquidate the assets and affairs of a nonprofit corporation if:

- the directors are deadlocked in the management of the corporate affairs and irreparable injury to the nonprofit corporation is being suffered or threatened, and either the members are unable to break the deadlock or there are no members having voting rights;
- the acts of the directors or those in control of the nonprofit corporation are illegal, oppressive, or fraudulent;

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- the corporate assets are being misapplied or wasted; or
- the corporation is unable to carry out its purposes.

The superior courts also have the power to liquidate the assets and affairs of a nonprofit corporation if:

- the nonprofit corporation applies to have its dissolution continued under the supervision of the court; or
- in an action filed by the Attorney General to dissolve a corporation, it is established that liquidation of the nonprofit corporation's affairs should precede the entry of a decree of dissolution.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): Several sections of the WNCA that govern the liquidation of a nonprofit corporation by a superior court are repealed.

A superior court may dissolve a nonprofit corporation, in an action brought by members, a director, or the attorney general under the following circumstances:

- the directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;
- the directors have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- the members are deadlocked in voting power and have failed, for at least two consecutive annual meeting dates to elect successors to directors whose terms have expired;
- the corporate assets are being misapplied or wasted; or
- the corporation has insufficient assets to continue its activities and is no longer able to assemble a quorum of directors or members.

A superior court may also dissolve a nonprofit corporation in an action brought by creditor, under certain circumstances, and in a proceeding brought by the corporation to have its voluntary dissolution continued under court supervision.

In a proceeding to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian during litigation with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing may be held.

In a judicial proceeding brought to dissolve a nonprofit corporation, a court may appoint one or more receivers to wind-up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court appointing the receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever it is located. The court must describe the powers and duties of the receiver or custodian in its appointing order.

A receiver may dispose of all or any part of the assets of the nonprofit corporation at a public or private sale if authorized by the court.

A custodian may exercise all of the powers of the corporation, through or in place of its board of directors and any designated body, to the extent necessary to manage the affairs of the corporation consistent with its mission and in the best interests of its members and creditors.

The court may redesignate a receivership as a custodianship or vice versa, if doing so is consistent with the mission of the corporation and in the best interests of the corporation, its members and creditors.

After a hearing, if the court determines that one or more of the grounds for judicial dissolution exist, the court may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution. The clerk of court must deliver a certified copy of the decree to the Secretary of State for filing. After entering the decree of dissolution, the court must direct the winding-up and liquidation of the nonprofit corporation's affairs.

This act is prospective and applies only to actions or proceedings commenced on or after the effective date of the act.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute As Passed Committee): The act is prospective and applies only to actions or proceedings commenced on or after the effective date of the act.

The superior court may dissolve a corporation in an action brought by the Attorney General under the same circumstances as actions brought by members or a director. Provisions governing the distribution of assets and the proceeds from the sale of corporate assets are restored. References to the term "designated body" are removed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Proposed Substitute As Heard in Committee:
PRO: We have a situation in Spokane related to nonprofit governance that led me to look at the nonprofit corporation code, and I discovered that in a judicial dissolution the only thing the court can do is liquidate the corporate assets. My intent in introducing this legislation was to bring the nonprofit code up to par with the for profit corporation code as it relates to the powers of the court to dissolve a corporation when the board is deadlocked. Hopefully, the situation in Spokane won't end up in dissolution, but if it does, we want the court to have more tools available than just liquidation.

The governance of the Inland Northwest Health Services (INHS) is caught between two hospitals who are pretty close to an impasse. The only option the judge currently has should the corporation enter into dissolution is a fire sale liquidation. This statute is over 40 years

old and does not reflect the needs of today's nonprofit corporations. We've worked with INHS over the past 15 years and rely heavily on some of the health and emergency medical services INHS provide. A liquidation of INHS would jeopardize the health and safety of our community. Giving the court dissolution authority would allow the corporation to be reorganized, which would serve preserve the services the community relies upon.

CON: There is pending litigation and we do not feel that it is the Legislature's role to insert itself into the middle of an ongoing legal dispute. We feel strongly that the emergency clause should not be included. There would be no fire sale. The articles of incorporation of INHS have specified what should happen in a dissolution. This bill would impact all nonprofit corporations. Why try to push this bill through in a short 60-day session when you cannot get the input of a broad range of nonprofit corporations? We have invested over \$270 million in the health care systems in Spokane over the past year. We value the services INHS provide, and have no interest in damaging those services.

Persons Testifying: PRO: Representative Driscoll, prime sponsor; Joe King, INHS; Tom Martin, Lincoln County Hospital District; Tom Jensen, Couolee Medical Center; Donald Querna, Randall Danskin.

CON: Dennis Barts, Valley Hospital & Medical Center; Stellman Keehnel, Empire Health Systems; William Gilbert, Deaconess Medical Center.