

# HOUSE BILL REPORT

## ESHB 2532

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### As Passed House:

February 15, 2002

**Title:** An act relating to allowing the use of electronic mail telecommunications technology by nonprofit corporation committees.

**Brief Description:** Allowing the use of electronic mail telecommunications technology by nonprofit corporation committees.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Linville, Crouse, Morris, Berkey, Morell and Wood).

### Brief History:

#### Committee Activity:

Judiciary: 2/1/02, 2/7/02 [DPS].

#### Floor Activity:

Passed House: 2/15/02, 98-0.

### Brief Summary of Engrossed Substitute Bill

- Allows the board of directors of a nonprofit corporation to designate member committees to carry out the business of the corporation.
- Allows a committee of the nonprofit corporation or a committee of the board of directors to participate in a meeting by means of electronic transmission if no member of the committee objects.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

**Staff:** Edie Adams (786-7180).

### Background:

Nonprofit corporations may form for any lawful purpose, including charitable, benevolent, educational, civic, patriotic, political, religious and social. The powers of a

nonprofit corporation include the power to sue and be sued, engage in property transactions, lend money, make contracts and incur liabilities. A nonprofit corporation may not issue stock, make income disbursements to members, officers or directors, or make loans or advance credit to directors or officers.

Nonprofit corporations are managed by a board of directors. If allowed under the articles of incorporation, a majority of the board of directors may appoint committees that have the authority of the board of directors in the management of the corporation, with some exceptions for major actions such as amending the bylaws or articles of incorporation, or approving a merger or dissolution. The board of directors and any committees of the board may hold regular and special meetings. The board acts upon a majority vote of directors present at a meeting where there is a quorum. Unless the articles or bylaws prohibit it, members of the board or any committee designated by the board may participate in a meeting by conference telephone or other communication device that enables all persons to hear each other at the same time. Participation by these means constitutes presence in person at the meeting.

A nonprofit corporation may have one or more classes of members or no members. An annual meeting of members must be held and special meetings of members may be called. Notice of members' meetings and voting and quorum requirements are generally provided for in the bylaws. Unless the articles or bylaws prohibit it, members of the corporation may participate in a meeting by conference telephone or other communication device that enables all persons to hear each other at the same time. Participation by these means constitutes presence in person at the meeting.

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### **Summary of Engrossed Substitute Bill:**

The nonprofit corporations act is amended to allow the board of directors to designate member committees to carry out the business of the corporation, with exceptions for major actions such as amending the bylaws or articles of incorporation, adopting a merger plan or dissolving the corporation.

A committee of members designated by the board of directors, or a committee of the board of directors, may participate in a meeting of the committee by electronic mail as long as no member objects and: (1) the proposed recipient of any electronic transmission has consented in writing to the receipt of the electronic communication; and (2) the electronic communication is capable of being reproduced in a traditional paper format by both the sender and the receiver. Electronic mail is defined as the transmission and reception of electronic communication. Participation in a meeting by electronic mail constitutes presence in person at the meeting.

Any person who has consented to receive electronic communications may revoke this consent by delivering a written revocation to the corporation.

A statement is added that the authorization of electronic transmissions in the context of meetings of committees of members and directors does not amend or modify the provision that allows members or directors to act without a meeting only if all members or directors consent in writing.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill addresses concerns for a broad range of nonprofit corporations who have been using e-mail to conduct routine business and did not realize it might not be authorized under the statute. There are many nonprofits in favor of this bill. It is good policy because it moves these entities into the technical age. Allowing routine matters to be dealt with through e-mail provides an easier, less time-consuming way to conduct business for matters that do not require discussion.

**Testimony Against:** We support modernization of the nonprofit statutes but it needs to be done in a comprehensive fashion. The revision made to the business corporation statute to authorize electronic communications involved a very complicated process that required a detailed look at the whole statute to make sure there were no inconsistencies being created. The Bar Association plans to conduct a similar process for the nonprofit statute. The changes being proposed could have the result of stifling minority views because it does not require a unanimous agreement to conduct the meeting by e-mail. This bill can create ambiguity and inconsistency because it is not looking at the issue comprehensively.

**Testified:** (In support) Representative Linville, prime sponsor; and Larry Stout, Washington Association of Realtors.

(Opposed) Laverne Woods, Washington State Bar Association, Business Section.