

HOUSE BILL REPORT

HB 1098

As Reported by House Committee On:
Judiciary

Title: An act relating to the Washington nonprofit corporation act.

Brief Description: Authorizing electronic notice and other communications within the Washington nonprofit corporation act.

Sponsors: Representatives Lantz and Carrell.

Brief History:

Committee Activity:

Judiciary: 1/30/03, 2/4/03 [DP].

Brief Summary of Bill

- Amends the Washington Nonprofit Corporation Act to authorize filings, notices, consents and other forms of communication between members and directors to be made by electronic transmission.
- Authorizes elections of officers and directors to be conducted by electronic transmission and allows electronic proxy appointments.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby and Newhouse.

Staff: Edie Adams (786-7180).

Background:

The Washington Nonprofit Corporation Act (WNCA) provides rules and requirements on the organization and operation of nonprofit corporations and the relationship between members, directors and officers of the nonprofit corporation.

There are many provisions of the WNCA that require notices or other communications to be given between members and directors. For example, meetings of members require

that notice be provided either by mail or personal delivery. Action may be taken by members or directors without having a meeting under certain circumstances as long as the action is evidenced by written consent of the members or directors. In addition, members and directors may waive specified notice requirements by written consent.

Proxy appointments for purposes of voting by members may be authorized by the articles of incorporation or bylaws and must be executed in writing. Elections of officers or directors of a nonprofit corporation may be conducted by mail if authorized by the bylaws.

A nonprofit corporation must maintain a registered office and registered agent in the state. A registered agent may be an individual, or a domestic or foreign corporation or nonprofit corporation, whose business office is identical with the nonprofit corporation's registered office.

In 2002 the Legislature passed HB 2313 which authorized nonprofit corporations to electronically file required documents with the Office of the Secretary of State in accordance with rules adopted by the Secretary of State. In addition, the Legislature passed SHB 2301 which authorized the use of electronic communications under the Washington Business Corporation Act for certain notices, consents and other communications between shareholders and directors, and for required filings with the Office of the Secretary of State. The Washington State Bar Association proposes that the Legislature adopt similar changes with respect to the WNCA.

Summary of Bill:

The WNCA is amended to authorize filings, notices, consents and other forms of communication between members and directors to be made by electronic transmission. Amendments are also made to provisions relating to registered offices and registered agents, and to proxy appointments.

Notice by electronic transmission is authorized under the WNCA if the electronic transmission complies with specified requirements. "Electronic transmission" means an electronic communication not directly involving the physical transfer of a tangible record and that may be retained, retrieved, and reviewed, and directly reproduced in a tangible medium. References to "written" notice are changed to notice in the form of a "record," which is defined as any information in a tangible medium or in an electronic transmission.

Notice by electronic transmission is authorized if the member or director consents to electronically transmitted notice and designates an address, location or system for delivery of the electronic transmission. Notice may include material that the WNCA requires or permits to be included with the notice. Electronically transmitted notice may

be provided by posting the notice on an electronic network and delivering a separate record of the posting and how to obtain access to the posting.

A member or director may revoke consent to receive notice by electronic transmission by delivering a revocation that is in the form of a record. In addition, the consent of a member or director is automatically revoked if the nonprofit corporation is unable to electronically transmit two consecutive notices and this inability becomes known to the secretary or other person responsible for sending the notice. Inadvertent failure to treat this inability as a revocation does not invalidate any meeting or other action.

Notice of meetings of members may be transmitted by facsimile transmission or electronic transmission, in addition to mail or personal delivery. Notice by facsimile transmission, personal delivery or telegraph is effective when received. Notice in an electronic transmission is effective when it is transmitted to an electronic transmission address, location or system designated by the recipient or when posted to a network and a separate record of the posting has been delivered to the recipient.

Notice of the initial organizational meeting of directors may also be provided by facsimile transmission.

References throughout the WNCA to "document" are replaced with references to "record." References to "written" and "signed" in provisions relating to notices, consents and waivers are removed and replaced with the requirement that they be in the form of a "record" that is "executed." "Execute" is defined as follows: for written records, if the record is signed; for electronic transmissions, if it is transmitted with sufficient information to determine the sender's identity; and for records to be filed with the Office of the Secretary of State, if they comply with filing rules adopted by the Secretary of State.

Elections of directors or officers may be conducted by electronic transmission if authorized by the bylaws and if the nonprofit corporation has designated an electronic address to which the ballot may be transmitted. Proxy appointments may be made by electronic transmission.

Amendments are made to provisions relating to records filed with the Office of the Secretary of State office to allow the records to be filed through electronic transmission.

The types of entities that may serve as the registered agent of a nonprofit corporation are expanded to include a domestic or foreign limited liability company whose business office is identical with the corporation's registered office.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The purpose of the bill is to bring the Nonprofit Corporation Act into the electronic era. The bill allows the use of electronic communications where currently a written document is required, and this will increase efficiency and cost reductions for nonprofits, especially for smaller nonprofits that have limited resources. The bill provides that people who do not have access to e-mail or who do not want to use e-mail for communications do not have to. The changes are based on and parallel the revisions the Legislature made last year to the Business Corporations Act.

Testimony Against: None.

Testified: (In support) LaVerne Woods, Washington State Bar Association.