

SENATE BILL REPORT

ESB 6188

As Passed Senate, February 17, 2004

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: Senators Esser, Kline and Johnson.

Brief History:

Committee Activity: Judiciary: 1/28/04, 1/29/04 [DP].

Passed Senate: 2/17/04, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Jinnah Rose-McFadden (786-7421)

Background: The Washington Nonprofit Corporation Act (WNCA) establishes requirements regarding the organization and operation of nonprofit corporations. There are many provisions of the WNCA that require notice and communication between members and directors.

Under some circumstances, actions may be taken by members or directors without a meeting if the action is evidenced by written consent. A nonprofit's article of incorporation or bylaws may authorize: (1) proxy appointments by members, if executed in writing; and (2) the election of officers or directors by mail.

A nonprofit must maintain a registered office and 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 to the nonprofit corporation's registered office.

In recent years, the Washington Corporations Business Act has been amended to allow electronic transmission of certain notices, consents, and communications between shareholders and directors, as well as the electronic filing of documents with the Secretary of State. The State Bar Association proposes that similar changes be made to WNCA.

Summary of Bill: WNCA is amended to authorize filings, notices, consents, and other forms of communication between members and directors by electronic transmission. Members and directors must consent to notification by electronic transmission and must designate an address, location, or system for delivery. In the alternative, electronic notices may be posted on an electronic network if a separate record of the posting, with details on how to access the posting, is made available to members and directors.

A member or director may revoke consent to notification by electronic transmission. Consent is automatically revoked if: (1) the nonprofit is unable to electronically transmit two consecutive notices; and (2) the person responsible for transmitting the notice knows that the transmissions were unsuccessfully transmitted. Inadvertent failure to treat this inability as a revocation does not invalidate any meeting or other action.

Meeting notices provided by facsimile, personal service, or telegraph are effective when received; meeting notices provided electronically are effective when transmitted.

References throughout the WNCA to "document" are replaced with "record." References to "written" and "signed" are replaced with the requirement that notices, consents, and waivers be in the form of an executed record.

Additionally, (1) records may be filed with the Office of the Secretary of State electronically; (2) electronic proxies are authorized for nonprofits permitting proxy voting; (3) nonprofits may notify their board of directors of the initial organizational meeting by mail, fax, or electronic transmission; and (4) elections of directors or officers may be conducted by electronic transmission if: (a) authorized by the bylaws; and (b) an electronic address has been designated to receive the ballot.

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: This bill was requested by the State Bar Association, Nonprofit Corporations Committee. The committee spent a great deal of time drafting this bill, working in conjunction with both the Secretary of State and Governor's Office. By allowing nonprofits to communicate via electronic means, nonprofits will use less financial resources for administrative costs and more for charitable purposes. The proposed changes to the Nonprofit Corporation Act mirror changes codified in the Business Corporations Act. This ensures that the proposed changes to the Nonprofit Corporation Act are clear and will not require judicial interpretation.

Testimony Against: None.

Testified: PRO: Judith Andres, Washington State Bar Association, Nonprofit Corporations Committee.

House Amendment(s): The House amendment adds a provision allowing cooperatives organized under the Nonprofit Miscellaneous and Mutual Corporations Act to elect to avail itself of certain rights under the Cooperative Associations Act.