

# HOUSE BILL REPORT

## SHB 1545

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### As Amended by the Senate

**Title:** An act relating to nonprofit organizations.

**Brief Description:** Regulating nonprofit organizations.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Lantz, Esser, Carrell and Cody).

**Brief History:**

**Committee Activity:**

Judiciary: 2/13/01, 2/22/01 [DPS].

**Floor Activity:**

Passed House: 3/14/01, 98-0.

Senate Amended.

Passed Senate: 4/9/01, 48-0.

### Brief Summary of Substitute Bill

Amends various provisions of the Nonprofit Miscellaneous and Mutual Corporations Act, including:

- Reduces the quorum requirement for meetings to 10 percent, or 5 percent for consumer cooperatives.
- Allows members, shareholders, and directors to participate in meetings by any means of communication that allows all parties to hear each other.
- Allows the corporation to impose reasonable privacy and use limitations on the release of corporate records.
- Establishes duties of directors and makes changes with respect to the liability of directors and the ability of a corporation to indemnify directors.
- Makes changes to the right to dissent from corporate action and the process for dissent.
- Allows the board of directors to change the name of the corporation without approval of members and shareholders.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Lambert, Republican Vice Chair; Casada, Esser, Lovick and McDermott.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hurst, Democratic Vice Chair.

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

### **Background:**

A business that is operated on a nonprofit basis may organize under the Nonprofit Miscellaneous and Mutual Corporations Act for any lawful purpose, including mutual, social, cooperative, fraternal, or other purposes. This act sets forth the powers, duties, rights, and obligations of both the corporation and members or shareholders of the corporation.

A corporation organized as a nonprofit miscellaneous or mutual corporation is formed by filing articles of incorporation with the Secretary of State. The corporation is governed by the provisions of the articles of incorporation and the bylaws adopted by the board of directors. The corporation is managed by a board of directors and officers and may have members or shareholders.

Articles of Incorporation:

The articles of incorporation must contain certain provisions, including the corporate name, duration and purpose for which organized; the qualifications and rights of members; and whether the corporation will have capital stock. The provisions of the articles of incorporation may be amended by adoption of a resolution by the board of directors and approval by a two-thirds vote of the members and shareholders.

Meetings of Members/Shareholders and Directors:

A corporation must have an annual meeting and may call special meetings. Notice of regular and special meetings must be provided to each member or shareholder entitled to vote at the meeting. A member or shareholder may vote in person, or unless the articles of incorporation provide otherwise, by mail, electronic transmission, or proxy.

Action may be taken at a meeting if there is a quorum. For meetings of members and shareholders involving matters that require a two-thirds vote, a quorum is established when 25 percent of the members or shareholders entitled to vote are present. For all other matters, the articles of incorporation may specify a different quorum requirement, but if none is specified a quorum of 25 percent is required. Actions that require a two-thirds vote of those present include mergers, dissolutions, and the sale of all or most of the corporation's property and assets.

Records:

A corporation must keep a number of records, including accounts, minutes of meetings, and the names and addresses of all members and shareholders who are entitled to vote on corporate matters. All books and records of the corporation may be inspected by a member or shareholder for any proper purpose.

Directors and Officers:

There is no general release of liability for a director's acts or omissions with respect to the corporation or its members or shareholders. However, the articles of incorporation may eliminate or limit the personal liability of a director for damages that result from the director's conduct except for acts or omissions that involve intentional misconduct or a knowing violation of the law, or any transaction from which the director will personally benefit and to which the director is not legally entitled.

A corporation may indemnify a director for expenses incurred by the director in an action in which the director is a party because he or she is a director. However, the corporation may not indemnify the director for liability that results from the director's negligence or misconduct in the performance of his or her duty.

Mergers and Dissenters' Rights:

A corporation may merge or consolidate with one or more corporations. The board of directors must adopt a resolution approving the plan of merger and the plan must also be approved by a two-thirds vote of the members and shareholders.

A member or shareholder may dissent from the following corporate actions: merger or consolidation; a sale of all or most of the corporation's property or assets; or an amendment to the articles of incorporation that changes voting or property rights or that reorganizes a corporation. The ability to dissent from a merger does not apply if the surviving corporation owns all shares of all other corporations that are part of the merger or if the merger does not require a vote of the members or shareholders.

A dissenter must make a written demand within 10 days of the corporate action for payment of the fair value of the dissenter's membership or shares. The corporation must make an offer of fair value that it deems reasonable. If the member or shareholder does not agree with this determination, the corporation must file a petition with the court for a determination of fair value.

A corporation's articles of incorporation may limit the amount payable to a dissenter to less than fair value, but not to less than the consideration paid for membership or shares unless the fair value is less than the consideration paid.

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**Summary of Bill:**

A number of changes are made to provisions of the Nonprofit Miscellaneous and Mutual Corporations Act relating to provisions of the articles of incorporation, corporate name changes, records privacy, meetings and quorum requirements, liability of directors, and dissenters' rights.

Articles of Incorporation:

The board of directors may amend the articles of incorporation to change the name of the corporation without approval of the members or shareholders.

A statement is added that members or shareholders do not receive vested property rights from any provision of the articles of incorporation.

### Meetings of Members/Shareholders and Directors:

The quorum requirements for meetings of members and shareholders is lowered to 10 percent of members or shareholders entitled to vote. For consumer cooperatives, the quorum requirement is only 5 percent. A consumer cooperative is a corporation that sells goods or services for personal, family, or living uses to its members and other consumers. The articles of incorporation may provide different quorum requirements, except that the quorum for actions requiring a two-thirds vote may not be less than 10 percent, or 5 percent for consumer cooperatives.

If the articles of incorporation allow, a member or shareholder may participate in a meeting by any means of communication that allows all parties to hear each other, and is deemed to be present in person at the meeting. Similarly, a director may participate in a meeting of the board by any means of communication and is deemed present in person, unless the articles of incorporation or bylaws provide otherwise.

The only business that may be conducted at special meetings is business within the purposes specified in the special meeting notice.

Voting by mail or electronic transmission may be authorized in the corporation's bylaws.

### Records:

A corporation may impose reasonable privacy and other use limitations on the release of corporation records, except that the limitations may not prevent a member or shareholder from having access to records relating to the member's or shareholder's dealings with the corporation.

### Directors and Officers:

Duties of directors of a corporation are established. A director must act in good faith, in a manner the director believes to be in the best interests of the corporation, and with the care an ordinarily prudent person would use in a like situation. In performing his or her duties, a director may rely on opinions, reports, or statements prepared or presented by: officers or employees the director believes to be reliable; legal counsel, accountants or others as to matters the director believes to be within their expertise; or board committees as to matters within the committee's authority.

Unless the articles of incorporation provide otherwise, a director is not individually liable to the corporation or its members or shareholders, except for acts or omissions that involve intentional misconduct or a knowing violation of the law, or for transactions for which the director will personally benefit.

The ability of a corporation to indemnify its directors is expanded. The corporation may

indemnify a director for expenses incurred by the director in a court action, unless the director's conduct involved intentional misconduct or a knowing violation of the law, or for transactions from which the director will personally benefit.

A statement is added to the provision governing director's liability that the Attorney General's ability to bring an action for breach of a charitable trust by a nonprofit corporation or its directors or officers is not limited or modified.

#### Mergers and Dissenters' Rights:

The types of actions from which a member or shareholder may dissent are changed. A member or shareholder may not dissent from a merger where the member's or shareholder's status continues on substantially similar terms. A member's or shareholder's right to dissent from action that changes voting or property rights is limited to situations where the action materially reduces the number of shares owned to a fraction of a share if this fractional share is to be acquired by the corporation for cash. The ability of a member or shareholder to dissent from an action that reorganizes a corporation is removed.

The process for dissenting from a corporate action and making a demand on the corporation for fair value is amended. If the member or shareholder does not agree to an offer of fair value made by the corporation, the member or shareholder must make a demand on the corporation within 60 days of the corporate action, requesting the corporation to file a petition with the court for a determination of fair value. A member or shareholder who fails to make this request within 60 days forfeits the right to receive payment of fair value. The corporation must file a petition with the court within 30 days after receiving a demand from a member or shareholder to file the petition.

The fair value payable to a dissenting member of a consumer cooperative is fixed at the amount of consideration paid for the membership unless the articles of incorporation provide otherwise.

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#### **EFFECT OF SENATE AMENDMENT(S):**

The provision that allows a corporation to impose reasonable privacy and other use limitations on the release of corporation records is removed. The quorum requirement for corporations other than consumer cooperatives is changed back to the current law requirement of 25 percent (instead of the 10 percent required in the underlying bill). The changes to the release of a director from liability apply to conduct occurring after the effective date of the act. A technical amendment is made to the section governing the duties of directors and officers to clarify that officers may rely on information provided by directors, officers or professionals.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** This bill is trying to bring the Nonprofit Miscellaneous Mutual Corporations Act into the modern world so that it can better meet the needs of businesses in the rapidly changing retail environment. These changes represent the modern trend, and the intent in updating the statute is to allow companies to interact more efficiently with their members. Many of the changes are conforming to other areas of business law.

(With concerns) It is unclear how the liability provisions of section one of the bill can be reconciled. The bill changes the business judgement rule, and this would be disadvantageous because it would prevent use of case law developed under that rule. The ability of a corporation to limit access to records is too broad; it needs to be more narrowly drawn.

**Testimony Against:** None.

**Testified:** (In support) Representative Lantz, prime sponsor; Kathleen Beamer and John Steel, Recreational Equipment, Inc. (REI).

(With concerns) Larry Shannon, Washington State Trial Lawyers Association.