
Judiciary Committee

ESB 6188

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 Summary of Engrossed Bill
<ul style="list-style-type: none">• 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.

Hearing Date: 2/27/04

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 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: The bill takes effect 90 days after adjournment of session in which bill is passed.