

SENATE BILL REPORT

HB 1098

As of March 19, 2003

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: 3/21/03.

SENATE COMMITTEE ON JUDICIARY

Staff: Jinnah Rose-McFadden (786-7421)

Background: The Washington Nonprofit Corporation Act (WNCA) governs 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 as long as the action is evidenced by written consent. A nonprofit's articles 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 with the nonprofit corporation's registered office.

In recent years, a parallel statute governing all other corporations, 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 first 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 directions on how to access the posting, is sent to each member and director.

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) a nonprofit may notify the board of directors of its 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.