

FINAL BILL REPORT

ESB 6188

C 265 L 04

Synopsis as Enacted

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

Sponsors: Senators Esser, Kline and Johnson.

Senate Committee on Judiciary

House Committee on Judiciary

Background: Notice and Communication: 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. However, current law does not permit electronic transmission of notices and communication between shareholders and directors of nonprofit corporations.

Nonprofit Cooperatives: Some nonprofits are cooperatives, owned by member-customers and organized to render economic services to members rather than generate corporate profit.

State law regulates the way in which cooperatives are organized and function. In Washington, cooperative organizations and associations may be organized under two distinct chapters of the state code. Chapter 23.86 is exclusive to cooperative associations, while Chapter 24.06 allows a range of nonprofit and mutual benefit organizations, including cooperatives, to be formed thereunder. However, cooperatives that organize under Chapter 24.06 are excluded from many of the benefits offered to cooperatives organized under Chapter 23.86.

Summary: Notice and Communication: 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.

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 boards 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.

Nonprofit Cooperatives: Cooperatives organized under Chapter 24.06 prior to the effective date of this act may avail themselves of the additional rights granted to cooperative associations organized under Chapter 23.86. Specifically, cooperatives organized under Chapter 24.06 may elect to: (1) limit individual member liability as authorized under RCW 23.86.105(1); and (2) apportion and distribute earnings to members, as specified in RCW 23.86.160 and 23.86.170. Additionally, consumer cooperatives organized under Chapter 24.06 may elect to use the words "corporation," "incorporated," or "limited" in their names, as authorized under RCW 23.86.030.

Votes on Final Passage:

Senate	48	0	
House	94	0	(House amended)
Senate	47	0	(Senate concurred)

Effective: June 10, 2004