

# HOUSE BILL REPORT

## SHB 3046

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**As Passed House:**  
February 10, 2010

**Title:** An act relating to dissolving the assets and affairs of a nonprofit corporation.

**Brief Description:** Addressing the dissolution of the assets and affairs of a nonprofit corporation.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Driscoll, Rodne, Kretz, Ormsby, Wood, Johnson and Parker).

**Brief History:**

**Committee Activity:**

Judiciary: 1/28/10, 2/1/10 [DPS].

**Floor Activity:**

Passed House: 2/10/10, 97-0.

**Brief Summary of Substitute Bill**

- Replaces the procedures for judicial liquidation of a nonprofit corporation with provisions from the Model Nonprofit Corporation Act, Third Edition, adopted by the American Bar Association.
- Permits superior courts to dissolve nonprofit corporations in actions brought by the Attorney General, members, directors, or creditors of a nonprofit corporation, if certain criteria are met.
- Authorizes the court to appoint a receiver or custodian to manage the affairs of the nonprofit corporation during a proceeding to dissolve the corporation.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts and Ross.

**Staff:** Courtney Barnes (786-7194).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**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 corporation.

The WNCA governs how a nonprofit corporation may be dissolved. Nonprofit corporations may be dissolved either voluntarily, administratively, or judicially. In certain situations, a nonprofit corporation may be subject to liquidation and dissolution as the result of proceedings brought by a member or director of the nonprofit corporation, the Attorney General (AG), or a creditor.

In a proceeding to liquidate the assets and affairs of a nonprofit corporation, the court has the power to issue injunctions, appoint receivers, and to take other actions to preserve the corporate assets and carry on the affairs of the nonprofit corporation until a full hearing is held. After a hearing, the court may appoint a liquidating receiver or receivers with the authority to collect or dispose of any or all of the assets of the nonprofit corporation. In proceedings to liquidate the assets and affairs of a nonprofit corporation, the court must enter a decree dissolving the nonprofit corporation after all debts, obligations, and liabilities of the nonprofit corporation have been paid or discharged. Upon entry of the dissolution decree, the nonprofit corporation ceases to exist.

**Model Nonprofit Corporation Act.**

The Model Nonprofit Corporation Act, Third Edition, was adopted by the American Bar Association (ABA) in 2008. Prior to its adoption, the ABA sponsored a task force to make changes to its own Revised Model Nonprofit Corporation Act. This task force was comprised of attorneys from around the nation.

**Summary of Substitute Bill:**

The procedures for judicial liquidation under current law are replaced with the provisions governing judicial dissolution from the Model Nonprofit Corporation Act, Third Edition, adopted by the ABA.

A superior court may dissolve a nonprofit corporation in a proceeding brought by the AG, creditor, or 50 members or members holding at least 5 percent of the voting power, whichever is less, or by a director or member of a designated body, if certain criteria are met. In a proceeding brought to dissolve a nonprofit corporation, a court may issue injunctions, appoint a temporary receiver or custodian with all powers and duties as the court directs, take other action required to preserve the corporate assets, and carry on the activities of the nonprofit corporation until a full hearing can be held.

After giving notice to all parties, a court must hold a hearing before appointing a receiver or custodian. Among other powers, a court-appointed receiver may dispose of all or any part of the assets of the nonprofit corporation and sue and defend suits by the corporation. A court-appointed custodian may exercise all of the powers of the nonprofit corporation to the extent necessary to manage the affairs of the corporation consistent with its mission and in the bests

interests of its members and creditors. If doing so is consistent with the mission of the nonprofit corporation and in its best interests, a court may re-designate the receiver a custodian or re-designate a custodian a receiver.

Other provisions are created to address venue in a dissolution proceeding and compensation paid to a court-appointed receiver or custodian and counsel.

After a hearing, if a court determines that one or more grounds for judicial dissolution exist, the court may enter a decree dissolving the nonprofit corporation and specifying the effective date of dissolution. After entering the decree of dissolution, the court must direct the winding up and liquidation of the nonprofit corporation's affairs.

The bill is prospective and only applies to actions or proceedings commenced on or after the effective date of the bill.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The intent of the bill is to create more options for judges when nonprofit corporations are facing deadlocks or other grounds for judicial dissolution. The Washington Business Corporation Act (WBCA) governs for-profit corporations and provides judges with more options, other than liquidation, when for-profit corporations are facing judicial dissolution. The goal of the bill is to revise the WNCA to create options similar to those under the WBCA.

Currently, the City of Spokane has a nonprofit corporation whose members are deadlocked. This nonprofit is an asset to the community, and it would be unfortunate if the only remedy available to a court is to order a fire sale of this corporation. This legislation is not designed to be special interest legislation. All nonprofit corporations are affected by the changes made in the bill. The intention of the bill is to give judges options to address the public good and make decisions in equity. The current litigation in Spokane involves issues that will be resolved, but there is an ongoing concern that this nonprofit corporation may eventually face judicial dissolution proceedings because of a deadlock. The public relies on the services of this nonprofit corporation, and the court should be able to do more than force the liquidation of the nonprofit corporation, which would deprive the community of these services.

(Opposed) The bill imports language from the WBCA to the WNCA. This attempt is unworkable because the language is vague, but it works for the WBCA because it functions as a mechanism to allow judges to move money around. For nonprofit corporations, this language is unguided and would be asking a judge to step in and run the nonprofit corporation. If the goal of the bill is to update the WNCA judicial dissolution procedures, the

entire WNCA should be revised after careful consideration by a committee or sub-committee.

Further, the bill is an attempt to intervene in ongoing litigation in Spokane and violates the separation of powers doctrine. The pending litigation will work itself out, but a deadlock could be brought through this proceeding. The nonprofit corporation in Spokane has procedures in place to address how the assets will be handled in the event of a judicial dissolution. These services would not disappear but would be handed over to nonprofit foundations.

**Persons Testifying:** (In support) Representative Driscoll, prime sponsor; Joe King and Donald Quenna, Inland Northwest Health Systems; Tom Martin, Lincoln County Public Hospital; and Tom Jensen, Coulee Medical Center.

(Opposed) Stelman Koehnel, DLA Piper and Empire Health.

**Persons Signed In To Testify But Not Testifying:** None.