

# SENATE BILL REPORT

## SHB 3046

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As of February 23, 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:** Passed House: 2/10/10, 97-0.

**Committee Activity:** Judiciary: 2/23/10.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Kim Johnson (786-7472)

**Background:** The Washington Nonprofit Corporation Act (WNCA) provides for the creation and operation of nonprofit corporations and the relationship between its members, directors, and officers. The WNCA governs how a nonprofit corporation may be dissolved and liquidated. Nonprofit corporations may be dissolved either voluntarily, administratively, or judicially. In certain situations, a nonprofit corporation may be subject to dissolution as the result of proceedings brought by a member or director of the nonprofit corporation, the Attorney General, or a creditor.

In an action by a member, director, or the Attorney General, the superior courts currently have the power to liquidate the assets and affairs of a nonprofit corporation if:

- the directors are deadlocked in the management of the corporate affairs and irreparable injury to the nonprofit corporation is being suffered or threatened, and either the members are unable to break the deadlock or there are no members having voting rights;
- the acts of the directors or those in control of the nonprofit corporation are illegal, oppressive, or fraudulent;
- the corporate assets are being misapplied or wasted; or
- the corporation is unable to carry out its purposes.

The superior courts also have the power to liquidate the assets and affairs of a nonprofit corporation if:

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- the nonprofit corporation applies to have its dissolution continued under the supervision of the court; or
- in an action filed by the Attorney General to dissolve a corporation, it is established that liquidation of the nonprofit corporation's affairs should precede the entry of a decree of dissolution.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Amendments):** Several sections of the WNCA that govern the liquidation of a nonprofit corporation by a superior court are repealed.

A superior court may dissolve a nonprofit corporation, in an action brought by members, a director, or the attorney general under the following circumstances:

- the directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;
- the directors have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- the members are deadlocked in voting power and have failed, for at least two consecutive annual meeting dates to elect successors to directors whose terms have expired;
- the corporate assets are being misapplied or wasted; or
- the corporation has insufficient assets to continue its activities and is no longer able to assemble a quorum of directors or members.

A superior court may also dissolve a nonprofit corporation in an action brought by a creditor, under certain circumstances, and in a proceeding brought by the corporation to have its voluntary dissolution continued under court supervision.

In a proceeding to dissolve a corporation, a court may issue injunctions, appoint a general or custodial receiver during litigation with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing may be held.

In a judicial proceeding brought to dissolve a nonprofit corporation, a court may appoint one or more general receivers to wind-up and liquidate, or one or more custodial receivers to manage, the affairs of the corporation. The court appointing the general or custodial receiver has exclusive jurisdiction over the corporation and all of its property wherever it is located. The court must describe the powers and duties of the general or custodial receiver in its appointing order.

A general receiver may dispose of all or any part of the assets of the nonprofit corporation at a public or private sale if authorized by the court.

A custodial receiver may exercise all of the powers of the corporation, through or in place of its board of directors and any designated body, to the extent necessary to manage the affairs of the corporation consistent with its mission and in the best interests of the corporation and its creditors.

The court may redesignate a general receivership as a custodial receivership or vice versa, if doing so is consistent with the mission of the corporation and in the best interests of the corporation and its creditors.

After a hearing, if the court determines that one or more of the grounds for judicial dissolution exist, the court may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution. The clerk of court must deliver a certified copy of the decree to the Secretary of State for filing. After entering the decree of dissolution, the court must direct the winding-up and liquidation of the nonprofit corporation's affairs.

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

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: Nonprofits are struggling in this economy. How do we preserve the assets of a nonprofit when it is not functioning? It would be nice to give the court more options to deal with nonprofits that are in a deadlock. The local situation in Spokane has highlighted a problem in the Nonprofit Corporation Act. This bill provides the court the option of doing something more than just having a fire sale.

OTHER: Our only concern is the emergency clause on this piece of legislation. We can find no justification for having the clause on the bill.

**Persons Testifying:** PRO: Representative Driscoll, prime sponsor; Joe King, Inland Northwest Health Services.

OTHER: Tom Parker, Community Health Services.