

CHANGES TO THE PENNSYLVANIA NONPROFIT CORPORATION LAW: ELECTRONIC TECHNOLOGY AND MEETING NOTICES, MEETINGS, PROXIES AND ACTIONS BY CONSENT

Bylaws play a vital role in the overall structure of a nonprofit corporation. The Nonprofit Corporation Law generally defines bylaws as the "code or codes of rules adopted for the regulation or management of the business and affairs of the corporation." Essentially, the bylaws serve as the nonprofit organization's playbook, detailing the rules of the organization as well as the roles of its players.

On July 9, 2013, Governor Tom Corbett approved Senate Bill 304, which became Act 67 of 2013. Act 67 makes extensive revisions to the Nonprofit Corporation Law to permit the use of electronic technology by nonprofit organizations. These particular revisions are now in effect, meaning Pennsylvania nonprofit organizations are free to explore additional ways electronic technology is utilized to effectuate their missions.

A commonly cited driving force of Senate Bill 304 was to get the Nonprofit Corporation Law up to speed with the Business Corporations Law. For example, pursuant to the Business Corporation Law, a for-profit corporation has been generally free to provide required notices by e-mail or other electronic communication. A nonprofit corporation, however, was not afforded this same opportunity (other than by facsimile transmission, which continues to be a permissible method). As amended, the Nonprofit Corporation Law now provides that meeting notices may be given to its members (if member-based) as well as the members of its board of directors by sending a copy to the person's address for e-mail or other electronic communications supplied by the person for the purpose of notice.

As it relates to electronic technology, the Nonprofit Corporation Law further provides:

- Meetings of the members of a nonprofit corporation that is member-based may be held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions to the directors and members of any other body, make appropriate motions and comment on the business of the meeting. Moreover, the participation by members at member meetings by conference telephone, or other electronic means, including, without limitation, the internet, will constitute presence of, or vote or action by, or consent or dissent of the member.
- Members of the board of directors may participate in meetings by conference telephone or other "electronic technology" by means of which all persons participating in the meeting can hear each other. "Electronic technology" replaced the words "similar communications equipment."
- Generally, a member or a member's duly authorized attorney-in-fact (of a member-based nonprofit) may execute or authenticate a writing or transmit an electronic message authorizing another person to act for the member by proxy.
- Any action to be taken at a meeting of the directors may occur without a meeting if a consent (or consents) to the action in "record form" are signed, before, on or after the effective date of the action, by all of the directors in office on the date the last consent is signed. The consent (or consents) must be filed with the secretary of the nonprofit corporation. "Record form" is defined in Title 15 as "inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form."
- Likewise, any action to be taken by members of a nonprofit corporation (if member-based) may occur without a meeting if a consent (or consents) to the action in "record form" are signed, before, on or after the effective date of the action, by all of the members who would be entitled to vote at a meeting for that purpose. The consent (or consents) must be filed with the minutes of the members' proceedings.

- If the bylaws so provide, any action to be taken by members may occur without a meeting upon the signed consent of members who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all members entitled to vote on such action were present and voting. In this case, the action taken is not effective until 10 days after notice has been given to the nonconsenting members entitled to vote on such action. The consent (or consents) must be filed in “record form” with the minutes of the members’ proceedings.

The Corporate and Organizations Practice Group of Gibbel Kraybill & Hess LLP provides comprehensive legal counsel to nonprofits through the life-cycles of these organizations. We specifically counsel nonprofit organizations on formation and operations matters, including the development of bylaws, policies resolutions and other governing documents. We also provide counsel to nonprofit organizations seeking to revisit their bylaws. Please contact GKH's Corporate and Organizations Practice Group in the Lancaster office at 717.291.1700.

DISCLAIMER: This does not serve as a comprehensive narration of Act 67 of 2013, Title 15, the Business Corporation Law or the Nonprofit Corporation Law and you are encouraged to consult with your advisors. This synopsis does not serve as or constitute legal advice and is not intended, and may not be used, to avoid penalties that may be imposed on a taxpayer. Again, please contact GKH's Corporate and Organizations Practice Group at 717.291.1700 for additional information.