



AN ACT GENERALLY REVISING VOTING REQUIREMENTS AND PROCEDURES FOR NONPROFIT ORGANIZATIONS; PROVIDING FOR ELECTRONIC AND REMOTE COMMUNICATIONS TO BE USED FOR ATTENDING MEETINGS AND VOTING; AND AMENDING SECTIONS 35-2-114, 35-2-115, 35-2-119, 35-2-233, 35-2-520, 35-2-526, 35-2-527, 35-2-533, 35-2-535, 35-2-539, 35-2-542, AND 35-2-911, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-2-114, MCA, is amended to read:

"35-2-114. Definitions. As used in this chapter, the following definitions apply:

- (1) "Approved by the members" means approved and ratified by the affirmative vote:
- (a) of a majority of the votes represented and voting:
 - (i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;
 - (ii) by a written ballot or written consent in conformity with this chapter; or
 - (iii) by the affirmative vote, written ballot, or written consent of the majority; and
 - (b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.
- (2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.
- (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications.
- ~~(3)~~(4) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.
- ~~(4)~~(5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

~~(5)~~(6) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

~~(6)~~(7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

~~(7)~~(8) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

~~(8)~~ "Deliver" includes mail:

(9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt in a manner authorized by the secretary of state.

~~(9)~~(10) "Directors" means individuals:

- (a) designated in the articles or bylaws or elected by the incorporators and their successors; and
- (b) elected or appointed by any other name or title to act as members of the board.

~~(10)~~(11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

~~(11)~~(12) "Domestic corporation" means a corporation.

~~(12)~~(13) "Effective date of notice" has the meaning provided in 35-2-115(5).

(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~(13)~~(15) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

~~(14)~~(16) "Entity" includes:

- (a) a corporation and foreign corporation;
- (b) a business corporation and foreign business corporation;
- (c) a profit and nonprofit unincorporated association;
- (d) a corporation sole;
- (e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(17) "External communications" includes any communication with the secretary of state, the attorney general, a state, or the United States.

~~(15)~~(18) "File", "filed", or "filing" means filed in the office of the secretary of state.

~~(16)~~(19) "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

~~(17)~~(20) "Governmental subdivision" includes an authority, county, district, and municipality.

~~(18)~~(21) "Includes" denotes a partial definition.

~~(19)~~(22) "Individual" includes the estate of an incompetent individual.

(23) "Internal communications" includes any notice, vote, written consent, written ballot, demand, record, member list, corporate record, or any other communication between members, directors, delegates, proxies, third persons under 35-2-232, or the corporate secretary.

~~(20)~~(24) "Means" denotes a complete definition.

~~(21)~~(25) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

- (i) any rights the person has as a delegate;
- (ii) any rights the person has to designate a director or directors; or
- (iii) any rights the person has as a director.

~~(22)~~(26) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

~~(23)~~(27) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

~~(24)~~(28) "Notice" means that term as described in 35-2-115.

~~(25)~~(29) "Person" includes any individual or entity.

~~(26)~~(30) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

(31) "Present" or "presence" includes any form of electronic, virtual, or digital presence authorized by a corporation's articles or bylaws.

~~(27)~~(32) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

~~(28)~~(33) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(34) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(29)~~(35) "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

~~(30)~~(36) "Religious corporation" means a domestic corporation designated as a religious corporation.

(37) "Remote communication" includes communication made by conference telephone call, internet, electronic, remote technology, or similar communication through which all participants in the meeting have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

~~(34)~~(38) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(39) "Sign" or "signed" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

~~(32)~~(40) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

~~(33)~~(41) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

~~(34)~~(42) "Vote" or "voting" includes but is not limited to authorization by written ballot and written consent the giving of consent in the form of a record provided electronically or by written ballot and written consent.

~~(35)~~(43) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors

at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

(44) "Written" or "in writing" means:

(a) with respect to internal communications, any record in tangible or electronic form or any form allowed under Title 30, chapter 18, part 1; and

(b) with respect to external communications, tangible records or any form authorized by the external party."

Section 2. Section 35-2-115, MCA, is amended to read:

"35-2-115. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of electronic, wire, or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when delivered or mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern."

Section 3. Section 35-2-119, MCA, is amended to read:

"35-2-119. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. The document may contain other information as well.

(3) The document must be typewritten or printed unless an electronic form is allowed by the secretary of state.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation.

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(ii) For the purposes of this subsection (5)(b), "authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 4. Section 35-2-233, MCA, is amended to read:

"35-2-233. Amendment terminating members or redeeming or canceling memberships. (1) Any amendment to the articles or bylaws of a public benefit corporation or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter.

(2) Before adopting a resolution proposing an amendment described in subsection (1), the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(3) After adopting a resolution proposing an amendment described in subsection (1), the notice to members proposing the amendment must include one statement of up to 500 words opposing the proposed amendment if the statement is submitted by any five members or members having 3% or more of the voting

power, whichever is less, not later than 20 days after the board has voted to submit the amendment to the members for their approval. In public benefit corporations, the production, ~~and mailing,~~ or electronic transaction costs must be paid by the corporation.

(4) Any amendment under this section must be approved by the members by two-thirds of the votes cast by each class.

(5) The provisions of 35-2-520 do not apply to any amendment that meets the requirements of this chapter."

Section 5. Section 35-2-520, MCA, is amended to read:

"35-2-520. Termination, expulsion, and suspension. (1) A member of a public benefit corporation or mutual benefit corporation may not be expelled or suspended and membership in these corporations may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) the articles or bylaws set forth a procedure that provides:

(i) not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons for it; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it takes into consideration all relevant facts and circumstances.

(3) ~~(a) A~~ Except as provided in subsection (3)(b), a written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(b) Written notice may be given to any authenticated electronic identification as shown on the corporation's records.

(4) A proceeding that challenges an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues,

assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension."

Section 6. Section 35-2-526, MCA, is amended to read:

"35-2-526. Annual and regular meetings. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office. To the extent authorized in the articles or bylaws, the board may determine that an annual meeting of members will be held solely by means of remote communication.

(4) At the annual meeting:

(a) the president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(5) At regular meetings, the members shall consider and act upon matters raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(7) ~~If the corporation has 50 or fewer members and if permitted by the bylaws, members may participate in a meeting of the members by means of a conference telephone call or similar remote communication equipment through which all persons participating in the meeting can hear each other at the same time.~~ Participation Unless otherwise provided in the articles or bylaws, participation in this manner constitutes presence in person at a meeting."

Section 7. Section 35-2-527, MCA, is amended to read:

"35-2-527. Special meeting. (1) A corporation with members shall hold a special meeting of members:

(a) on the call of its board or of the person authorized to do so by the articles or bylaws; or

(b) except as provided in the articles or bylaws of a religious corporation, if the holders of at least 5% of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting that describe the purpose or purposes for which it is to be held.

(2) For purposes of determining whether the 5% requirement of subsection (1) has been met, the record date is at the close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer.

(3) If a notice for a special meeting demanded under subsection (1)(b) is not given pursuant to 35-2-530 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of subsection (4), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to 35-2-530.

(4) Special meetings of members may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office. Member participation and presence at a special meeting must be the same as allowed under 35-2-526(7).

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by 35-2-530 may be conducted at a special meeting of members."

Section 8. Section 35-2-533, MCA, is amended to read:

"35-2-533. Action by written ballot. (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A corporation may deliver a written ballot by electronic communication as long as a member gives consent. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

~~(2)~~(3) A written ballot must:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

~~(3)~~(4) Approval by written ballot pursuant to this section is valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

~~(4)~~(5) All solicitations for votes by written ballot must:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors; and

(c) specify the time by which a ballot must be received by the corporation in order to be counted.

~~(5)~~(6) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked."

Section 9. Section 35-2-535, MCA, is amended to read:

"35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a

member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record."

Section 10. Section 35-2-539, MCA, is amended to read:

"35-2-539. Proxies. (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) ~~attending being present at~~ any meeting and voting ~~in person~~; or

(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes

either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to 35-2-542 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment."

Section 11. Section 35-2-542, MCA, is amended to read:

"35-2-542. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member or is the authenticated electronic identification of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member or is not the authenticated electronic identification of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) the member is an entity and the name signed or electronic identification used purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(b) the name signed or electronic identification used purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) two or more persons hold the membership as cotenants or fiduciaries and:

(i) the name signed or electronic identification used purports to be the name of at least one of the coholders; and

(ii) the person signing or using the electronic identification appears to be acting on behalf of all the coholders; or

(d) in the case of a mutual benefit corporation:

(i) the name signed or electronic identification used purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status

acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
or

(ii) the name signed or electronic identification used purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature or electronic identification ~~on it~~ or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise."

Section 12. Section 35-2-911, MCA, is amended to read:

"35-2-911. Financial statements for members. Upon the written request of any member of the corporation, the corporation shall ~~mail~~ deliver to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations."

- END -

I hereby certify that the within bill,
SB 0176, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 176

INTRODUCED BY PETERSON, T. BROWN, LARSEN, F. MOORE, SESSO

AN ACT GENERALLY REVISING VOTING REQUIREMENTS AND PROCEDURES FOR NONPROFIT ORGANIZATIONS; PROVIDING FOR ELECTRONIC AND REMOTE COMMUNICATIONS TO BE USED FOR ATTENDING MEETINGS AND VOTING; AND AMENDING SECTIONS 35-2-114, 35-2-115, 35-2-119, 35-2-233, 35-2-520, 35-2-526, 35-2-527, 35-2-533, 35-2-535, 35-2-539, 35-2-542, AND 35-2-911, MCA.