



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3387

Introduced 2/10/2010, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

805 ILCS 105/107.10	from Ch. 32, par. 107.10
805 ILCS 105/108.45	from Ch. 32, par. 108.45
805 ILCS 105/108.60	from Ch. 32, par. 108.60

Amends the General Not For Profit Corporation Act of 1986. Provides that unless otherwise provided in the articles of incorporation or the bylaws, any action required by the Act to be taken at any annual or special meeting of the members entitled to vote, or any other action which may be taken at a meeting of members entitled to vote, may also be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be approved by all the members entitled to vote. In connection with informal action taken by the directors, requires that a consent to such action be approved in writing (instead of signed) by all the directors. In provisions concerning a director's conflict of interest, provides that if a director is an officer or director of both parties to a transaction involving a grant or contribution, without consideration, from one entity to the other, that director is not "indirectly" a party to the transaction provided the director does not have a material financial interest in the entity that receives the grant or contribution (replacing an existing similar provision). Effective immediately.

LRB096 19767 DRJ 35204 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The General Not For Profit Corporation Act of
5 1986 is amended by changing Sections 107.10, 108.45, and 108.60
6 as follows:

7 (805 ILCS 105/107.10) (from Ch. 32, par. 107.10)

8 Sec. 107.10. Informal action by members entitled to vote.

9 (a) Unless otherwise provided in the articles of
10 incorporation or the bylaws, any action required by this Act to
11 be taken at any annual or special meeting of the members
12 entitled to vote, or any other action which may be taken at a
13 meeting of the members entitled to vote, may be taken by ballot
14 without a meeting in writing by mail, e-mail, or any other
15 electronic means pursuant to which the members entitled to vote
16 thereon are given the opportunity to vote for or against the
17 proposed action, and the action receives approval by a majority
18 of the members casting votes, or such larger number as may be
19 required by the Act, the articles of incorporation, or the
20 bylaws, provided that the number of members casting votes would
21 constitute a quorum if such action had been taken at a meeting.
22 Voting must remain open for not less than 5 days from the date
23 the ballot is delivered; provided, however, in the case of a

1 removal of one or more directors, a merger, consolidation,
2 dissolution or sale, lease or exchange of assets, the voting
3 must remain open for not less than 20 days from the date the
4 ballot is delivered.

5 (b) Such informal action by members shall become effective
6 only if, at least 5 days prior to the effective date of such
7 informal action, a notice in writing of the proposed action is
8 delivered to all of the members entitled to vote with respect
9 to the subject matter thereof.

10 (c) In the event that the action which is approved is such
11 as would have required the filing of a certificate under any
12 other Section of this Act if such action had been voted on by
13 the members at a meeting thereof, the certificate filed under
14 such other Section shall state, in lieu of any statement
15 required by such Section concerning any vote of members, that
16 an informal vote has been conducted in accordance with the
17 provisions of this Section and that written notice has been
18 delivered as provided in this Section.

19 (d) In addition, unless otherwise provided in the articles
20 of incorporation or the bylaws, any action required by this Act
21 to be taken at any annual or special meeting of the members
22 entitled to vote, or any other action which may be taken at a
23 meeting of members entitled to vote, may also be taken without
24 a meeting and without a vote if a consent in writing, setting
25 forth the action so taken, shall be approved by all the members
26 entitled to vote with respect to the subject matter thereof.

1 (Source: P.A. 96-649, eff. 1-1-10.)

2 (805 ILCS 105/108.45) (from Ch. 32, par. 108.45)

3 Sec. 108.45. Informal action by directors.

4 (a) Unless specifically prohibited by the articles of
5 incorporation or bylaws, any action required by this Act to be
6 taken at a meeting of the board of directors of a corporation,
7 or any other action which may be taken at a meeting of the
8 board of directors or a committee thereof, may be taken without
9 a meeting if a consent in writing, setting forth the action so
10 taken, shall be approved in writing ~~signed~~ by all of the
11 directors and all of any nondirector committee members entitled
12 to vote with respect to the subject matter thereof, or by all
13 the members of such committee, as the case may be.

14 (b) The consent shall be evidenced by one or more written
15 approvals, each of which sets forth the action taken and
16 provides a written record of approval. All the approvals
17 evidencing the consent shall be delivered to the secretary to
18 be filed in the corporate records. The action taken shall be
19 effective when all the directors or the committee members, as
20 the case may be, have approved the consent unless the consent
21 specifies a different effective date.

22 (c) Any such consent approved in writing ~~signed~~ by all the
23 directors or all the committee members, as the case may be,
24 shall have the same effect as a unanimous vote and may be
25 stated as such in any document filed with the Secretary of

1 State under this Act.

2 (Source: P.A. 96-649, eff. 1-1-10.)

3 (805 ILCS 105/108.60) (from Ch. 32, par. 108.60)

4 Sec. 108.60. Director conflict of interest.

5 (a) If a transaction is fair to a corporation at the time
6 it is authorized, approved, or ratified, the fact that a
7 director of the corporation is directly or indirectly a party
8 to the transaction is not grounds for invalidating the
9 transaction.

10 (b) In a proceeding contesting the validity of a
11 transaction described in subsection (a), the person asserting
12 validity has the burden of proving fairness unless:

13 (1) The material facts of the transaction and the
14 director's interest or relationship were disclosed or
15 known to the board of directors or a committee consisting
16 entirely of directors and the board or committee
17 authorized, approved or ratified the transaction by the
18 affirmative votes of a majority of disinterested
19 directors, even though the disinterested directors be less
20 than a quorum; or

21 (2) The material facts of the transaction and the
22 director's interest or relationship were disclosed or
23 known to the members entitled to vote, if any, and they
24 authorized, approved or ratified the transaction without
25 counting the vote of any member who is an interested

1 director.

2 (c) The presence of the director, who is directly or
3 indirectly a party to the transaction described in subsection
4 (a), or a director who is otherwise not disinterested, may be
5 counted in determining whether a quorum is present but may not
6 be counted when the board of directors or a committee of the
7 board takes action on the transaction.

8 (d) For purposes of this Section, a director is
9 "indirectly" a party to a transaction if the other party to the
10 transaction is an entity in which the director has a material
11 financial interest or of which the director is an officer,
12 director or general partner; except that if a director is an
13 officer or director of both parties to a transaction involving
14 a grant or contribution, without consideration, from one entity
15 to the other, that director is not "indirectly" a party to the
16 transaction provided the director does not have a material
17 financial interest in the entity that receives the grant or
18 contribution.

19 (e) (Blank). ~~The provisions of this Section do not apply~~
20 ~~where a director of the corporation is directly or indirectly a~~
21 ~~party to a transaction involving a grant or contribution,~~
22 ~~without consideration, by one organization to another.~~

23 (Source: P.A. 96-649, eff. 1-1-10.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.