

Summary of Sources of State Nonprofit Corporation Laws

by Michael E. Malamut, JD, PRP

The effect of state law on standard parliamentary practice is a difficult issue for parliamentarians to address. *Robert's Rules of Order Newly Revised*, 10th edition (*RONR*) states that state procedural laws supersede parliamentary rules (562n). On the other hand, parliamentarians are typically cautioned that their role is not to interpret or apply the law, only the rules of parliamentary procedure. On the third hand, many (but by no means all) provisions of state nonprofit corporation law, the law most likely to apply to membership associations working with a parliamentarian, are written in straightforward English that, for the most part, any well-read non-lawyer can understand.

This article is the first in a three-part series. It introduces the basic source of the general nonprofit corporation law of each state, the District of Columbia, and Puerto Rico. The table below describes the source of each state's nonprofit corporation law as of the end of 2007. The two most common sources of state nonprofit corporation laws are: (1) the 1952 Model Nonprofit Corporation Act (MNPCA), promulgated by the American Bar Association (ABA) and currently adopted (with amendments) in twelve states and the District of Columbia, and (2) the ABA's 1988 Revised Model Nonprofit Corporation Act (RMNPCA), closely related to, or adopted by, the law of twenty-six states. Because these are the most common sources of state procedural rules that may vary parliamentary rules, the next two articles in this series lay out the particular provisions of each of the two versions of the model statute that might affect parliamentary procedure.

Thus, parliamentarians would be well served to be familiar with typical procedural issues that are addressed in many state nonprofit statutes. For a parliamentarian, it will generally be adequate to inform the presiding officer that there are statutory provisions that may supersede the parliamentary rules, but that the parliamentarian is not a lawyer and can only inform the presiding officer of procedural issues covered by state law that might affect procedures within those meetings. While most state statutes concerning meeting procedures apply because an organization is a corporation, statutory procedural requirements may apply to voluntary associations, labor organizations, trusts, and other non-corporate entities.

A parliamentarian should remember that parliamentary training does not cover analysis of applicable law. (Even parliamentarians who are also attorneys must avoid analyzing applicable laws when they are retained [solely] to be the parliamentarian.) By reviewing a corporate organization's articles of incorporation (sometimes called the "articles of organization" or "certificate of incorporation"), however, a parliamentarian can typically (and permissibly) determine the organization's state of incorporation. Again, a parliamentarian cannot be expected to determine the applicable

law. The most common statutory framework for membership associations is organization under the applicable state nonprofit corporation act. Many parliamentarians are familiar with the nonprofit corporation laws of their home states. The nonprofit corporation act is generally, however, only one of several types of corporation available under the varying state law.

Many states also have other corporation statutes for specific types of nonprofits. For example, cooperatives, religious bodies, and homeowners associations often have incorporation statutes specific to their circumstances that supersede or modify provisions of the general nonprofit corporation act. Some older organizations may have been chartered by the legislature through a special statute, which may govern internal affairs instead of a general statute. States also have different ways of treating older corporations when they adopt a new nonprofit statute. Transitional provisions may apply or the corporation may be able to elect to continue operating under the older statute (or certain provisions of it) or the new statute. Sometimes, although rarely, a state where a nonprofit corporation has its principal place of business, if that is different from the state of incorporation, may impose its own requirements through a “foreign corporations” statute. A lawyer familiar with the corporate statutes of the state should be able to determine definitively which statutory scheme applies to an incorporated organization and, therefore, which procedural laws may override bylaws provisions or rules in an adopted parliamentary authority.

Despite all these caveats, the incorporation statute most likely to apply to most incorporated membership associations is the incorporating state’s general nonprofit corporation law. Therefore, it might be useful for parliamentarians to be familiar with the procedural provisions of the nonprofit corporation law of the state or states where they do most of their practice. If the organization is a nonprofit corporation and does not have a retained lawyer to address statutory issues, the parliamentarian may be most helpful to the presiding officer by saying:

“I am not a lawyer and, therefore, I cannot be certain whether the _____ state nonprofit corporation law or some other statute applies to this organization. Also, I am not trained to be able to interpret the provisions of the law. However, if the nonprofit corporation law applies, you should be aware of the following provisions: _____. As a parliamentarian, my role is to advise you about the effect of procedural rules contained in your bylaws, parliamentary authority, and other adopted rules, not the legal effect of statutes. However, as presiding officer, you are the one who decides how to apply the rules, subject to appeal (*RONR* p. 449, l. 7–10). When you make rulings on procedural issues, you may want to take the statutory provisions into account.”

The following table describes the primary source of the general nonprofit corporation law of each state. Just because the state incorporation statute is modeled on the MNPCA or RMNPCA does not mean that the

Sources of State Nonprofit Law
(continued from previous page)

applicable state statute is a *verbatim* adoption of the model act. In some states, the model acts have been adopted largely verbatim and changed little over the years. In other states, the model act was adopted with some changes and additional amendments have been made over the years. Only review of the specific statute will yield all the applicable details. Familiarity with the principal variances from standard parliamentary procedure contained in the model acts will, however, prepare the parliamentarian for what to look for in the nonprofit corporation statute of a particular state.

The reader of the table below should note that, in addition to the thirty-nine jurisdictions whose nonprofit corporation laws derive from or are closely related to one of the model acts, five states and Puerto Rico have general corporation acts that apply to both business and nonprofit corporations. Such states typically have a few provisions specific to nonprofit

Table: Principal Sources of State Nonprofit Corporation Law

Alabama	1952 MNPCA
Alaska	1988 RMNPCA
Arizona	1988 RMNPCA
Arkansas	1988 RMNPCA
California	Model for 1988 RMNPCA
Colorado	1988 RMNPCA
Connecticut	1988 RMNPCA
Delaware	state-specific general corporation act, limited non-stock provisions
Florida	1990 Not-for-Profit Corporation Act based on 1989 Fla. Business Corporation Act, based on 1984 Revised Model Bus. Corp. Law, parallel to 1988 RMNPCA
Georgia	1988 RMNPCA
Hawaii	1988 RMNPCA
Idaho	1988 RMNPCA
Illinois	1986 Not-for-Profit Corporation Act, based on 1983 Ill. Bus. Corp. Law, based on draft of 1984 Revised Model Bus. Corp. Law, parallel to 1988 RMNPCA

Indiana	1988 RMNPCA
Iowa	1952 RMNPCA
Kansas	general incorporation act, follows Delaware, limited non-stock provisions
Kentucky	1952 MNPCA
Louisiana	1968 state-specific Nonprofit Corporation Act, based on 1968 La. Business Corporation Law
Maine	1988 RMNPCA
Maryland	state-specific general corp. act, w/ short insert of provisions from 1952 MNPCA
Massachusetts	1971 state-specific act for “corporations for charitable and certain other purposes” w/ some provisions adopted by reference from former state business corporation act
Michigan	1982 state-specific nonprofit corporation act, based on 1972 Michigan Business Corporation Act
Minnesota	1988 RMNPCA
Mississippi	1988 RMNPCA

corporations, often derived from one of the model acts. In Delaware and Kansas, the general corporation laws have provisions for “non-stock” corporations, which will include most nonprofit corporations. An additional seven states have state-specific nonprofit acts. That usually means that the state commissioned a special study and tried to adopt a statute addressed to the concerns of that state. Often these statutes will be based on or closely related to the state’s business corporation law. The newer state-specific statutes will often adopt some significant provisions from one of the model acts. A parliamentarian familiar with the principal procedural provisions of the model acts should be in a better position to know what types of concerns to be aware of when reviewing applicable state-specific nonprofit statutes and general corporation statutes. ★

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Table: Principal Sources of State Nonprofit Corporation Law
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Missouri	1988 RMNPCA	Oregon	1988 RMNPCA
Montana	1988 RMNPCA	Pennsylvania	1988 state-specific Nonprofit Corporation Law, based on 1988 Pa. Business Corporation Law
Nebraska	1988 RMNPCA	Puerto Rico	state-specific general corp. act, 1995, some non-stock corporation provisions
Nevada	1991 state-specific nonprofit corporation act, based on 1991 “private corporation” act	Rhode Island	1952 MNPCA w/ some additions
New Hampshire	state-specific “voluntary corporations” act, parts date to 1846	South Carolina	1988 RMNPCA
New Jersey	1952 MNPCA	South Dakota	1952 MNPCA
New Mexico	1952 MNPCA	Tennessee	1988 RMNPCA
New York	1969 state-specific Not-for-Profit Corporation Law, based on 1961 N.Y. Business Corporation Law	Texas	1952 MNPCA
North Carolina	1988 RMNPCA	Utah	1988 RMNPCA
North Dakota	1988 RMNPCA	Vermont	1988 RMNPCA
Ohio	1952 MNPCA, loosely	Virginia	1952 MNPCA
Oklahoma	state-specific general corp. act, 1986, some nonprofit provisions	Washington	1952 MNPCA
		West Virginia	general corp. act, w/ some provisions from 1952 MNPCA
		Wisconsin	1952 MNPCA
		Wyoming	1988 RMNPCA
		District of Columbia	1952 MNPCA