

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	9 - 1 - 0
Yeas:	Barton, Cameron, Garrett, Krieger, Olson, Smith J., Stiegler, Whisnant, Barker
Nays:	Shields
Exc.:	0
Prepared By:	Shannon Sivell, Counsel
Meeting Dates:	2/2, 3/25

WHAT THE MEASURE DOES: Eliminates the requirement for a parent company to notify shareholders of a planned merger. Specifies that the parent company is required to notify shareholders no later than 10 days after merger took effect.

ISSUES DISCUSSED:

- Injunction preventing completion of merger
- Standard for granting an injunction
- Right to seek an appraisal
- Shareholder rights
- Purpose of 30-day waiting period

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: ORS 60.491 sets forth the process by which a parent company can proceed with a “shortform” merger. A shortform merger is an efficient way for a parent company that owns 90 percent or more of a subsidiary to acquire the company in its entirety. Procedurally, the critical difference between a regular merger and a shortform merger is that a shortform merger does *not* require a shareholder meeting in order for the merger to take effect.

However, currently, ORS 60.491(2)(c) and ORS 60.491(3)(c) prohibit a parent corporation from filing articles of merger with the Secretary of State to effect the merger until at least 30 days after the date the parent mails a copy or summary of the plan of merger to each subsidiary shareholder. The issue is whether the 30-day waiting period imposed by statute creates needless delay. House Bill 2304 conforms ORS 60.491 to the Model Business Corporations Act by eliminating this requirement.

Unlike Oregon’s statute, the Model Business Corporation Act does not require an advance notice period for short-form mergers. Section 11.05 of the Model Business Corporation Act only requires notice to the shareholders of the effected merger within 10 days after the effective date. The Model Business Corporation Act’s 10-day notice requirement provides some protection for a subsidiary’s shareholders without delaying the transaction. In addition, shareholders who consider themselves harmed by the merger may still seek damages after completion of the merger.

3/26/2009 4:32:00 PM

This summary has not been adopted or officially endorsed by action of the committee.