

**Testimony in Support of HB 2567 A
Before the Senate Business and Transportation Committee**

May 7, 2013

Chair, members of the committee, my name is John Thomas and I am a partner in the business group of the law firm of Perkins Coie LLP. I became involved with the substance of HB 2567 in my role as co-chair of the Oregon State Bar Business Law Section Legislative Committee.

Oregon law does not clearly allow corporations to conduct remote-only shareholder meetings, such as meetings by webcast without a physical location. HB 2567 would clarify that Oregon corporations may hold remote-only shareholder meetings, subject to measures that must be implemented to ensure that shareholders may participate in the meeting in an effective manner.

Although Oregon corporations are expressly allowed to conduct shareholder meetings where shareholders may participate remotely, related statutes provide that shareholder meetings must also be held “at the place stated in or fixed in accordance with the bylaws.” These provisions seem to require a physical meeting place, and thus could be viewed as inconsistent with a provision permitting a remote-only shareholder meeting. Corporations, however, may prefer to hold remote-only shareholder meetings, which may reduce the expense of holding a meeting at a physical place, and is analogous to now standard public company earnings release webcasts, where the company announces its operating results and permits analysts to ask questions about the company’s presentation.

The Delaware General Corporation Law expressly authorizes corporations to conduct remote-only shareholder meetings. The Oregon Business Corporation Act differs from its Model Business Corporation Act counterpart because the Oregon statute includes the clause italicized below:

“Unless the articles of incorporation or bylaws provide otherwise, the bylaws or the board of directors, by resolution adopted in advance either specifically with respect to a particular meeting or generally with respect to future meetings, may permit any or all shareholders to participate in an annual or special meeting by, *or permit the conduct of a meeting through*, use of any means of communication through which all shareholders participating may simultaneously hear each other. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.”

The Colorado Code’s counterpart statute also includes the italicized clause, which practitioners have interpreted as permitting remote-only shareholder meetings because a different interpretation would render the italicized clause duplicative with the remainder of the statute. Sixteen other states follow the Delaware General Corporation Law model, whereas approximately seven states follow the Model Business Corporation Act model.

The Oregon legislature should adopt new statutory provisions that revise ORS 60.001(22), ORS 60.201(2), ORS 60.204(4) and ORS 60.222 to provide unambiguous, express authority for corporations to conduct remote-only shareholder meetings. ORS 60.201 should be amended to provide that directors of a

corporation may determine to hold an annual shareholder meeting solely by means of remote communication, and ORS 60.204 should be amended to provide that directors of a corporation may determine to hold a special shareholder meeting solely by means of remote communication. ORS 60.222 should be amended to provide for participation in remote-only shareholder meetings, including the procedures that must be implemented for remote-only shareholder meetings beyond simply ensuring that participants can hear each other.

Following testimony on this bill before the House Business and Labor Committee, the bill was amended to provide non-profit corporations the same opportunity to conduct remote-only membership meetings under ORS Chapter 65, analogous to the proposal with respect to for-profit corporation under ORS Chapter 60.

Adoption of this proposal would clarify that Oregon corporations, including non-profit corporations, are permitted to conduct remote-only shareholder or membership meetings, while preserving shareholders' and members' ability to participate in remote-only meetings to the same extent as a shareholder or membership meeting at a physical meeting place. Directors of Oregon corporations, therefore, could be certain that they could determine to hold a remote-only shareholder or membership meeting without also providing for a physical meeting place.

For these reasons, we ask that the committee vote in favor of HB 2567 for adoption by the House.