

**Testimony in Support of HB 2566
Before the House Business and Labor Committee**

February 11, 2013

Chair, members of the committee, my name is Chris Hall 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 2566 in my role as co-chair of the Oregon State Bar Business Law Section Legislative Committee.

Oregon law does not clearly allow officers to grant equity compensation to employees. HB 2566 would clarify an officer's authority in this regard, subject to proper Board of Director delegation and limitations.

Oregon corporations routinely grant options and similar forms of equity compensation to their employees. Many grant the equity compensation to a number of employees, including those not considered senior executive officers. Because senior executives may have a better view of the amount of awards to grant lower level officers and employees and because of administrative ease, some Oregon corporations desire to delegate administration of board-approved equity compensation programs to officers, within specific board-approved policies and procedures. Typically, maximum amounts and ranges of terms for awards will be set by the board. However, the law on the authority of a board to permit officers to exercise some or all of the board's functions regarding the award of rights, options, warrants or other forms of equity compensation is not always clear in Oregon. If a court were to interpret the law as not allowing the delegation, some employees would not hold valid equity compensation.

The Model Business Corporation Act and the Delaware General Corporation Law both expressly authorize corporate boards to delegate authority to officers to administer equity compensation programs.

The Oregon legislature should adopt a new statutory provision – ORS 60.157(3) – that would provide express authority for board delegation to officers of the designation of recipients of compensatory awards involving the issuance of shares, either directly or upon exercise of rights to acquire shares, and the determination of the amount and other terms of the awards, subject to any applicable limitations established by the board or shareholders. A board (or a committee with authority delegated to it under ORS 60.354) could decide whether to exercise this authority and, to the extent it does so, it must specify the total amount that may be awarded and may impose any other limits it desires as part of the board's oversight of the award process. ORS 60.157(3) would not permit authorizing an officer to make awards to herself or himself or to other persons specified by the board. ORS 60.157(3) would not address the extent to which the board or a committee may delegate authority in other circumstances.

The proposal makes the law consistent with certain existing practices by Oregon corporations. It would not change a board's duty to act in the best interest of the corporation and its shareholders, including its oversight role with respect to executive compensation. A board delegating authority would include appropriate limits on that authority, as provided in the proposal. For example, the amount or range of shares to be awarded to different classes of employees, the timing and pricing of awards and the vesting terms or other variable provisions of awards may be limited. The board or committee also might provide for periodic reporting to it of awards made under the delegated authority.

For these reasons, we ask that the committee vote in favor of HB 2566 for adoption by the House.