

# A-Engrossed Senate Bill 35

Ordered by the Senate March 16  
Including Senate Amendments dated March 16

Sponsored by Senators OLSEN, GELSER, Representative KOMP; Representatives GILLIAM, SPRENGER (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Specifies form of notice that cooperative must provide to directors, **members**, shareholders and other persons and when notice is effective. Specifies voting requirements for telephone cooperative with respect to sale, lease, exchange or other disposition of all or substantially all of cooperative's property and assets.

## A BILL FOR AN ACT

Relating to cooperatives; creating new provisions; and amending ORS 62.015, 62.265 and 62.435.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 62.**

**SECTION 2. (1) Notice under this chapter must be in writing unless the articles of incorporation or bylaws permit oral notice under specific circumstances. Notice by electronic transmission, other than oral notice delivered by electronic transmission, is in writing.**

**(2)(a) Notice in writing may be delivered by hand, by mail or by another delivery method. Oral notice may be delivered in person, by telephone or by electronic transmission.**

**(b) If delivery as described in paragraph (a) of this subsection is not practicable, notice may be communicated in a newspaper of general circulation in the county in which the registered office of the cooperative is located, or by radio, television or another form of broadcast communication.**

**(3) A cooperative shall give a notice required under this chapter to the cooperative's directors, members and shareholders in writing. A cooperative's or foreign cooperative's notice to a director, member or shareholder is effective, if the notice is in a comprehensible form:**

**(a) Upon deposit in the United States mail, if the notice is mailed postpaid and is correctly addressed to the director's, member's or shareholder's address, as shown in the cooperative's current record of director, member and shareholder addresses; or**

**(b) When communicated to the director, member or shareholder by electronic transmission using a method that the director, member or shareholder authorizes in writing.**

**(4) Written notice to a cooperative, or foreign cooperative that is authorized to do business in this state under this chapter, may be addressed to the cooperative's or foreign cooperative's registered agent at the registered agent's office or to an officer of the cooperative at the cooperative's principal office or at the mailing address shown for the cooperative in the cooperative's records.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (5) Unless the articles of incorporation or bylaws provide otherwise, written notice to a  
2 person other than a director, member or shareholder is effective:

3 (a) When received;

4 (b) Five days after deposit in the United States mail, as shown by the postmark on the  
5 notice, if the notice is mailed postpaid and correctly addressed; or

6 (c) On the date shown on a return receipt, if the notice is sent by registered or certified  
7 mail with return receipt requested and if the addressee or a representative of the addressee  
8 signs the return receipt.

9 (6) Oral notice is effective when communicated, if communicated in a comprehensible  
10 manner.

11 (7)(a) To the extent that a section of this chapter prescribes notice requirements for  
12 particular circumstances that differ from the requirements set forth in this section, the  
13 notice requirements for the particular circumstances control over the notice requirements  
14 set forth in this section.

15 (b) To the extent that the articles of incorporation or bylaws prescribe notice require-  
16 ments that are consistent with this section, the notice requirements in the articles of in-  
17 corporation or bylaws control over the notice requirements set forth in this section.

18 **SECTION 3.** ORS 62.015 is amended to read:

19 62.015. As used in this chapter, unless the context requires otherwise:

20 (1) "Anniversary" means *that* **the** day each year exactly one or more years after:

21 (a) The date [*of filing by*] **on which** the Secretary of State [*of*] **files** the articles of incorporation  
22 [*in the case of*] **for** a [*domestic*] cooperative.

23 (b) The date [*of filing by*] **on which** the Secretary of State [*of*] **files** an application for authority  
24 to transact business [*in the case of*] **for** a foreign cooperative.

25 (2) "Articles" means articles of incorporation, articles of conversion [*and*] **or** articles of merger.

26 (3) "Board" means board of directors.

27 (4) "Cooperative" means a cooperative corporation that is subject to the provisions of this  
28 chapter.

29 (5) "Corporation" means a corporation that is not a cooperative.

30 (6) "**Delivery**" means a method of delivery that is used in conventional commercial  
31 practice and includes hand delivery, mail delivery, commercial delivery and electronic  
32 transmission.

33 [(6)] (7) "Domestic limited liability company" means an entity that is an unincorporated associ-  
34 ation [*having*] **that has** one or more members and that is organized under ORS chapter 63.

35 [(7)] (8) "Domestic nonprofit corporation" means a corporation not for profit **that is** incorpo-  
36 rated under ORS chapter 65.

37 [(8)] (9) "Domestic professional corporation" means a corporation **that is** organized under ORS  
38 chapter 58 for the purpose of rendering professional services and for the purposes provided under  
39 ORS chapter 58.

40 (10) "**Electronic signature**" has the meaning given that term in ORS 84.004.

41 (11) "**Electronic transmission**" means a method of communicating information that:

42 (a) Does not directly involve a transfer of a physical object that embodies the communi-  
43 cation; and

44 (b) Enables the recipient to store, retrieve and reproduce the information.

45 [(9)] (12) "Foreign cooperative" means a cooperative corporation **that is** organized under laws

1 other than the laws of this state.

2 [(10)] (13) "Foreign corporation" means a corporation for profit **that is** incorporated under laws  
3 other than the laws of this state.

4 [(11)] (14) "Foreign limited liability company" means an entity that is an unincorporated asso-  
5 ciation organized under laws other than the laws of this state and that is organized under a statute  
6 under which an association may be formed that affords to each of the entity's members limited li-  
7 ability with respect to liabilities of the entity.

8 [(12)] (15) "Foreign nonprofit corporation" means a corporation not for profit **that is** organized  
9 under laws other than the laws of this state.

10 [(13)] (16) "Foreign professional corporation" means a professional corporation **that is** organized  
11 under laws other than the laws of this state.

12 [(14)] (17) "Member" means a person *[who has been]* **that is** qualified and accepted for mem-  
13 bership in a cooperative.

14 [(15)] (18) "Membership stock" means any class of stock, continuous ownership of which is re-  
15 quired for membership in a cooperative.

16 [(16)] (19) "Negotiate" means to confer with another in order to come to terms.

17 [(17)] (20) "Person" *[includes individuals, corporations, associations, firms, partnerships, joint*  
18 *stock companies and foreign and domestic cooperative corporations]* **means an individual, corpo-**  
19 **ration, association, firm, partnership, joint stock company, cooperative or foreign cooper-**  
20 **ative.**

21 [(18)] (21) "Shareholder" means a holder of shares of capital stock of a cooperative other than  
22 membership stock.

23 **(22) "Signature" means a manual, facsimile, conformed or electronic signature.**

24 **SECTION 4.** ORS 62.265 is amended to read:

25 62.265. (1) *[At any member meeting]* Each member *[has]* **is entitled to** one vote **with respect to**  
26 **a matter that is subject to a vote at any member meeting**, except that bylaws may authorize  
27 voting according to actual, estimated or potential patronage, or a combination of *[such plans of]*  
28 voting **according to actual, estimated or potential patronage**. Shares of stock *[as such shall not*  
29 *be given]* **do not have** voting power except in the specific instances authorized by this chapter.

30 (2) Members *[as such shall]* **may** not vote by proxy<sup>;</sup> *[but]*, **except that** a member that is a cor-  
31 poration, association or partnership may designate a representative to cast *[its]* **the member's** vote.  
32 In the absence of written notice that *[some person]* **a member has designated a person other than**  
33 **a natural person** *[has been designated]* to represent *[a]* **the** member, *[which is other than a natural*  
34 *person, such member may be represented by any of its]* **the member's** principal officers **may repre-**  
35 **sent the member**. If the bylaws of a cooperative provide for *[the formation of]* **forming** districts  
36 and *[the election of]* **electing** delegates at district meetings to represent *[their]* **the** districts in  
37 member meetings, such representation is not *[considered]* voting by proxy<sup>;</sup> and the delegates *[so*  
38 *elected]* shall cast the votes to which **the** members *[represented by them]* **that the delegates rep-**  
39 **resent** are entitled on *[such]* matters *[as are not covered by]* **that** mail ballots submitted to all  
40 members **do not cover**.

41 (3) If the bylaws so provide, the board may *[cause to be submitted by mail ballot]* **submit** any  
42 question *[to be voted on at any]* **that is subject to a vote at a** member meeting **by written ballot**,  
43 including the election of directors. *[In such event the secretary shall mail]* **The ballot must be**  
44 **mailed or communicated by electronic transmission** to each member, along with the notice of  
45 the meeting<sup>;</sup> *the ballot on each such question and a voting envelope*. The ballot may be cast *[only*

1 *in a sealed envelope which is authenticated by* **if** the member's signature **authenticates the ballot.**  
 2 A vote *[so cast shall]* **cast by this method must** be counted as if the member were present and  
 3 voting in person.

4 (4) The bylaws may set forth provisions~~[, not inconsistent with this chapter, relating]~~ **with re-**  
 5 **spect** to the methods and procedures for voting **that are consistent with this chapter.**

6 **SECTION 5.** ORS 62.435 is amended to read:

7 62.435. (1) *[The]* **A** sale, lease, exchange or other disposition of all, or substantially all, **of a**  
 8 **cooperative's** *[the]* property and assets, *[of a cooperative, when]* **if** made in the **cooperative's** usual  
 9 and regular course of *[the]* business *[of the cooperative]*, may *[be made on such]* **occur under** terms  
 10 and conditions and for *[such]* consideration~~[, which may consist]~~ **that consists** in whole or in part  
 11 of money or property, real or personal, including shares of any other cooperative, corporation or  
 12 association, domestic or foreign, *[as shall be authorized by its board;]* **as the cooperative's board**  
 13 **authorizes. A sale, lease, exchange or other disposition in accordance with this subsection**  
 14 **does not require** *[and in such case no]* authorization or consent *[of]* **from** members or shareholders  
 15 *[is required].*

16 (2) **If** a sale, lease, exchange or other disposition of all, or substantially all, **of the**  
 17 **cooperative's** *[the]* property and assets, with or without *[the]* goodwill, *[of a cooperative, if not*  
 18 *made]* **does not occur** in the usual and regular course of *[its]* **the cooperative's** business, **the sale,**  
 19 **lease, exchange or other disposition may occur** *[may be made upon such]* **under** terms and for  
 20 *[such]* consideration~~[, which may consist]~~ **that consists**, in whole or in part, of money or property,  
 21 real or personal, including shares of any other cooperative, corporation or association, *[as may be]*  
 22 **if the sale, lease, exchange or other disposition is** authorized in the following manner:

23 (a) The board shall adopt a resolution *[recommending]* **that recommends** the sale, lease, ex-  
 24 change or other disposition and *[directing the submission thereof]* **submits the recommendation** to  
 25 a vote at a meeting of members, which may be either an annual or a special meeting~~[, or]~~. If *[there*  
 26 *are]* **the cooperative has** shareholders, the *[submission shall be]* **board shall submit the recom-**  
 27 **mendation** to a joint meeting of members and shareholders.

28 (b) **The board shall give** written or printed notice *[shall be given]* to each member and to each  
 29 shareholder within the time and in the manner provided in ORS 62.255 for *[the]* giving *[of]* notice  
 30 of meetings of members~~[, and shall]~~. **The notice must** state that the purpose, or one of the purposes,  
 31 of the meeting is to consider the *[proposed]* **recommendation for the** sale, lease, exchange or other  
 32 disposition.

33 (c) At the meeting, the members~~[, by affirmative vote of a majority of the member votes cast~~  
 34 ~~thereon, and the shareholders, by affirmative vote of a majority of the shareholder votes entitled to be~~  
 35 ~~voted thereon, or in the case of an electric or a telephone cooperative by affirmative vote of two-thirds~~  
 36 ~~of all the members and affirmative vote of two-thirds of the shareholder votes entitled to be voted~~  
 37 ~~thereon, may approve the sale, lease, exchange or other disposition, and may fix, or may authorize the~~  
 38 ~~board to fix, any or all of the terms and conditions thereof and the consideration to be received by the~~  
 39 ~~cooperative therefor.]~~ **and shareholders may approve the sale, lease, exchange or other dispo-**  
 40 **sition of all or substantially all of the cooperative's property and assets and may fix, or may**  
 41 **authorize the board to fix, any or all of the terms of and consideration for the sale, lease,**  
 42 **exchange or other disposition by an affirmative vote of:**

43 (A) **Two-thirds of all the members and two-thirds of all the shareholders of an electric**  
 44 **cooperative that are entitled to vote;**

45 (B) **A majority of all the members and a majority of all the shareholders of a telephone**

1 cooperative that are entitled to vote, unless the telephone cooperative's bylaws require a  
2 greater number; or

3 (C) A majority of all the members and a majority of all the shareholders of any other  
4 cooperative that are entitled to vote.

5 (3) After *[authorization by votes of]* the members and shareholders vote in accordance with  
6 subsection (2) of this section, the board nevertheless, in *[its]* the board's discretion, may abandon  
7 the sale, lease, exchange or other disposition *[of assets]* subject to the rights of third parties under  
8 any contracts *[relating thereto]* that relate to the sale, lease, exchange or other disposition,  
9 without further action or approval by members or shareholders.

10 **SECTION 6. Section 2 of this 2015 Act and the amendments to ORS 62.015, 62.265 and**  
11 **62.435 by sections 3 to 5 of this 2015 Act apply to notices that are communicated on or after**  
12 **the effective date of this 2015 Act.**

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