

House Committee on Consumer Protection and Government Effectiveness
Testimony Against
HB 4058

Chair Fagan, 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.

- HB 4058 creates a law that disenfranchises minority shareholder of Oregon public companies. If there is a contested vote, HB 4058 gives management the opportunity to reject unfavorable votes.
- As far as I know, it is the only statute of its kind in the nation and quite possibly conflicts with federal securities laws. I am not aware of any group that has taken the time and effort to understand the implications of the proposal.
- The following are other issues with the proposal:
 - HB 4058 can be used as a tool to thwart activist shareholders trying to create good corporate governance and executive pay practices. Companies will not likely decide there is a violation of federal disclosure laws unless it disagree with a the shareholder's proposal or vote. The proponents can say the law will be applied neutrally, but that would take a lot of faith.
 - Whether or not there is a securities disclosure violation is a judgement call in many situations to which the proposal will be applied to.
 - Whether there is a violation will depend on whether a shareholder subjectively files the right form (13D v. 13G) or whether shareholders are acting as a "group" -- a highly nuanced and technical determination under the securities laws, and one that frequently involves litigation.
 - For example, the New York Comptroller, which is actively pursuing its good governance project, could have its proposals thwarted because a company claims the Comptroller should have reported it is in concert with another shareholder that also expresses a desire for the company to adopt good governance practices. In other words, two "bad" shareholders equals no vote.
 - Proxy voting services, like ISS, and other watchers of laws that effectively help entrench incumbent boards, rate states based on the states protection laws. Oregon doesn't need to stand out with a unique "point" against it.

- The proposed law would stand out as one more reason not to be an Oregon company. We frequently are asked about the merits of Oregon law versus Delaware law. After pointing out this unusual provision, it would be the end of the discussion about where to incorporate.
- As proposed, HB 4058 is extremely vague and open-ended
- There are already protections for Oregon companies.
 - State law already provides that a shareholder accumulating 15% of an Oregon company without permission cannot take-over the company
 - State law already provides that a shareholder accumulating 20% of an Oregon public company (meeting tests) without permission loses its vote
 - Companies can adopt advance notice bylaws so that a shareholder can't surprise a company with a shareholder proposal
 - Companies can adopt a rights plan, which makes it extremely costly to acquire, say 10%, of a company without permission
 - Can have a staggered board to protect from a sudden proxy contest

If the fear is that a shareholder might vote against a management proposal or generous compensation plan, the shareholder is going to vote the way it wants regardless of whether the shareholder filed the federal notice of its share position.

Also, doesn't prevent a takeover. Can still conduct a tender offer and other tactics used by hostile acquirers, and if the shareholder wants to engage in a proxy contest, the shareholder has to announce its shareholdings when going public anyway.

- The SEC is actively pursuing violators of Rule 13d. In any event, a shareholder can secretly accumulate well in excess of the 5% threshold required for notice even if it timely files a Schedule 13d (there is a 10 day notice period).
- The purported issues giving rise to HB 4058 are not new. Current security disclosure requirements -- which are not a matter of state law -- have been in existence for quite some time. There is hardly an emergency or a need to make a rush decision. The federal securities are complex and typically drafted after careful deliberation with a lot of input. The SEC, public companies and shareholders have had countless high-stakes actions and battles to establish the current paradigm. I believe it is simply a mistake to think that Oregon, without even involvement from its securities lawyers, can quickly throw together some legislation solving for a perceived problem in the securities disclosure laws.
- For these reasons, I believe the committee should table HB 4058 until the proponents can demonstrate how these issues are addressed or are not issue.