



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

**MEMORANDUM**

DATE: February 21, 2017

TO: Honorable Jeff Barker, Chair  
House Committee on Judiciary

FROM: Susan Bower, Assistant Attorney General, Charitable Activities Section

SUBJECT: House Bill 2609 – Updates to Oregon Nonprofit Corporation Act

This testimony is presented in support of House Bill 2609.

**BACKGROUND**

The Nonprofit Corporation Act sets forth requirements for nonprofit corporations, including public benefit corporations, which are the corporate form for charitable organizations.

HB 2609 is the product of a work group formed by the Nonprofit Organizations Law Section of the Oregon State Bar. The work group's goal was to clarify or improve the functioning of the statutory framework without making major policy changes to the legal structure for nonprofit corporations in Oregon. Department of Justice attorneys were active members of the working group and provided input regarding the DOJ's role in charitable oversight. This bill seeks to modernize and clarify a number of legal requirements for nonprofits; it also contains a number of provisions to update for court rulings.

**CONCEPT**

Among the improvements in the legislation is clarification of the rights of statutory "members." Public benefit corporations are not required to have members as defined by the statute, but if they choose that option, members have certain rights to participate in the organization's governance. The Department of Justice frequently deals with questions and controversies concerning member rights. HB2609 will provide greater clarity and reduce misunderstandings and conflicts within organizations concerning member rights.

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The bill also makes the directors' right to inspect corporate records in connection with their fiduciary duties explicit, which may help reduce another source of internal disputes. It addresses some administrative burdens with respect to notice and quorum requirements and allows organizations to make greater use of email for notice and for board decisions.

The legislation's improvements include provisions to clarify the Attorney General's oversight authority. The Attorney General has been specifically added to the list of persons that can bring a derivative action on behalf of a public benefit corporation, which helps clarify the Attorney General's authority to take action to protect the public's interest in the organization, even when the corporate directors have failed to act. HB 2609 also expands the venues in which the Attorney General can bring actions for dissolution and other similar actions beyond Marion County. The Act's existing venue restrictions have sometimes made it difficult to combine an action for dissolution with actions against individual directors for malfeasance. The legislation also specifies that loss of tax exempt status may be grounds for an action for dissolution by the Attorney General and expands the circumstances in which Attorney General can seek the appointment of a corporate receiver. HB 2609 further authorizes the court to appoint directors when there is no other mechanism available to repopulate a board, thereby giving the Attorney General and court more options to preserve, rather than dissolve, a charitable organization if that is in the best interests of the public.

HB 2609 represents a significant effort to update the Nonprofit Corporation Act. It streamlines administrative tasks for nonprofit organizations, without limiting the Attorney General's enforcement authority, and represents an improvement to the Act.

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