

**HB 2609 – Revisions to Chapter 65, the Oregon Nonprofit Corporation Code**

*Statement prepared by the Chapter 65 Work Group of the Nonprofit Organizations Law Section of the Oregon State Bar in response to concerns voiced by the Freedom Foundation*

HB 2609 is the product of a workgroup created by the Oregon State Bar's Nonprofit Organizations Law Section. The Nonprofit Organizations Law Section is made up of well over 100 lawyers from all over Oregon, many representing small and medium sized nonprofit organizations. Nonprofit organizations in Oregon include charitable, educational, religious, and community organizations of all shapes and sizes.

The Nonprofit Organizations Law Section of the Oregon State Bar worked on this proposal amending ORS Chapter 65 for three years and sought input and comments from nonprofit organizations and practicing lawyers. HB 2609 seeks to modernize and clarify existing law and does not make major policy changes to the laws that govern nonprofit corporations in Oregon. As discussed below, many provisions in the current statute, as well as in HB 2609, provide default rules that may be changed in an organizations articles or bylaws. However, any changes that affect the voting rights of members of existing nonprofit corporations can be made only with the approval of the members. (*ORS 65.144*)

The Freedom Foundation has raised four concerns with the bill. This response addresses those concerns.

**Claim:** The bill creates the potential for members' contact information to be removed from membership lists that are subject to inspection by members. Sections 5, 21, 59.

**Response/Explanation:** HB 2609 allows a member of a nonprofit to provide alternative forms of contact information to the nonprofit, for purposes of notice and inspection. This change permits a member concerned about personal safety to provide an electronic address rather than a street address. The Work Group heard a great deal of concern about personal safety issues and the possibility that an abusive spouse could use a membership list to track down a partner. The same concerns – and changes in contact information – apply to directors.

**Claim:** The bill eliminates the need to hold annual meetings. Section 17.

**Response/Explanation:** A nonprofit corporation's annual meeting serves two purposes:

1. to provide information to the nonprofit's members on the activities and financial condition of the nonprofit, and

2. to provide an opportunity for the members to vote on matters subject to vote by the members (such as the election of directors).

The Work Group consistently heard that for some nonprofit corporations an annual meeting of members is an ineffective way to accomplish those purposes because very few members attend. Section 17 of HB 2609 creates a substitute procedure that a corporation may choose to use in lieu of an annual meeting. Under this procedure a corporation provides members with an annual report, either by mailing it (electronically or otherwise) or by posting it on the nonprofit's website, and then provides for written ballots under ORS 65.222. The bill does not eliminate the need to provide information and hold votes. It simply provides an alternative way to accomplish those purposes in a manner that for some nonprofits will be more effective.

**Claim:** The bill would weaken, if not remove, members' rights to vote on corporate mergers. Sections 42, 47, 50.

Response/Explanation: Sections 42, 47, and 50 reduce the vote required for members to amend the articles of incorporation or approve a merger to a majority of the votes cast. The statutes currently require a vote of 2/3 of the votes cast or a majority of the voting power, whichever is less. This change strengthens member control, by providing that a majority of members are may make changes to the nonprofit structure without being blocked by a minority of members. Moreover, these are default rules only; as is always the case, the organization can require supermajority or other voting requirements in their articles and bylaws.

One change proposed in the bill that could affect voting rights is to permit nonprofit corporations to change the default rules in the statute and specify which matters will be subject to a vote of the members. However, the following restriction in new ORS 65.144(2) applies to any such change:

*Notwithstanding a provision in a corporation's articles of incorporation or bylaws, a member has a right to:*

- (a) *Vote on an action or an amendment to the articles of incorporation if the action or amendment would reduce or eliminate the member's right to vote; and*
- (b) *Inspect and copy the corporation's records, as provided in ORS 65.774.*

Thus, a new nonprofit corporation can set the voting rights for its members from the outset, but an existing nonprofit corporation cannot change the voting rights of its members without their approval.

**Claim:** Revisions throughout the bill would reduce voting thresholds, weaken quorum requirements and dilute a corporation's notice standards.

Response/Explanation: In a number of places in the bill the voting requirements for directors are changed to a simple majority from a super majority, with the view that governance would be more effective with this change. With respect to members, a change in voting requirements is in the provision for removal of directors by members.

Under current law, members can remove a director if the number of votes cast for removal would be sufficient to elect the director (typically a majority of all members). The bill changes the number required to a majority of the votes cast. This change strengthens members' ability to remove a director, by reducing the threshold number of votes needed for removal. Again, these are default rules and an organization may impose stricter requirements in its articles and/or bylaws.

With respect to quorum requirements, Section 20 fixes an ambiguity in existing law. The revision explains how a quorum is determined when votes are cast by written ballot, without a meeting. The revision does not change existing law, but explains that if votes are cast by ballot the number of votes cast constitutes a quorum *if* the bylaws provide that the number of members present at a meeting constitute a quorum.

Finally, the bill strengthens notice standards by modernizing them. Under the bill, notice can be sent electronically, if a member provides an electronic address. The bill removes the options of providing notice by "telegraph or teletype," although these forms of communication, if desired, could still be considered "communication by private carrier", which remains an option in the bill. The bill adds requirements for electronic communication of notice, tied to the realities of communication by email.

Thank you for taking the time to consider our response to these concerns. If you have any concerns regarding these provisions or other sections of the bill the Oregon State Bar is happy to work with all interested parties to find a solution that works for all Oregon nonprofit organizations.