



**DEPARTMENT OF JUSTICE**

**MEMORANDUM**

DATE: February 4, 2019

TO: Honorable Floyd Prozanski, Chair  
Senate Committee on Judiciary

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

SUBJECT: Senate Bill 360 – Updates to Oregon Nonprofit Corporation Act

This testimony is presented in support of Senate Bill 360.

**BACKGROUND**

The Nonprofit Corporation Act provides the statutory framework for nonprofit corporations, including public benefit corporations, which are the corporate form of charitable organizations.

SB 360 is the product of a work group formed by the Nonprofit Organizations Law Section of the Oregon State Bar. The work group included attorneys from the private sector, representatives from the Nonprofit Association of Oregon, academics, and attorneys from the Oregon Department of Justice, Charitable Activities Section (“DOJ”). The goal of the work group was to clarify and modernize the laws governing nonprofit corporations in Oregon, without making major policy changes

**HIGHLIGHTS**

SB 360 clarifies the rights of statutory members of nonprofit corporations. Though public benefit nonprofits are not required to have statutory members, many do and DOJ frequently deals with questions and controversies concerning their rights. SB 360 will provide greater clarity and, hopefully, reduce conflicts within organizations concerning member rights. The bill also makes explicit that directors have the right to inspect corporate records in connection with their fiduciary duties, which may help reduce another source of internal disputes.

The bill allows organizations to make greater use of email for notice and board decisions and addresses some administrative burdens with respect to notice and quorum requirements. Members and directors are allowed to provide email addresses for contact, rather than street addresses, alleviating concerns about privacy and personal protection.

The legislation’s improvements include provisions that 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. SB 360 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 the Attorney General can seek the appointment of a corporate receiver. SB 360 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 and to be consistent with statutory provisions for charitable trusts. SB 360 also adopts provisions for identifying and dealing with shell corporations that have been enacted for for-profit corporations to help combat fraud and illegal activity.

SB 360 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.