

**Proposed Amendments to Oregon’s Nonprofit Corporation Code –
Chapter 65 of the Oregon Revised Statutes**

**Report of the Nonprofit Organizations Law Section of the Oregon State Bar
on SB 360 (2019)**

**Prepared by Susan N. Gary, Reporter
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I. Introductory Summary

Chapter 65 of the Oregon Revised Statutes – the Nonprofit Corporation Code – was enacted in 1989 and has remained largely unchanged since then. In the years since enactment, the lawyers who assist and advise nonprofit corporations as well as the lawyers who provide oversight for charities through the Attorney General’s office have found situations for which the statutory language is ambiguous or unhelpful. In addition, changes relating to the use of electronic resources for notice and meetings have left some sections of the Nonprofit Corporation Code in need of modernization.

II. History of the Project

In early 2014 the Executive Committee of Nonprofit Organizations Law Section (NOLS) of the Oregon State Bar appointed a Work Group to review Chapter 65. The goal was to identify any provisions that need clarification or modernization. The Work Group began by gathering comments and suggestions from lawyers who work with nonprofits, and the Committee also reached out to the Nonprofit Association of Oregon for input. The Work Group considered developments in other states, but started with the existing Oregon statutes and did not use another set of statutes or model act as a basis for the proposal.

Susan Gary, Professor of Law at the University of Oregon, served as the Chair of the Work Group and Reporter for the project. Initial Work Group members were David Atkin, Susan Bower, Cindy Cumfer, Elizabeth Grant, Kate Kilberg, Marisa Meltebeke, Nancy Murray, Anne O’Malley, and Jim White. Warren Binford joined the Work Group in 2017. The Work Group includes representatives from small and large law firms, the Charities Section of the office of the Attorney General, and the Nonprofit Association of Oregon.

The Work Group approached its work with two guiding principles. First, changes should clarify or improve the functioning of the statutory framework, but not make major

policy changes to the legal structure for nonprofit corporations in Oregon. Second, a nonprofit corporation should, with limited exceptions, be able to draft its own governance rules through its Articles and Bylaws. Certain rules will be mandatory and will be clearly identified as such in the statutes. Most rules will be default rules and will apply if the Articles and Bylaws of a nonprofit corporation are silent on the issue.

The Work Group developed a proposal that was introduced in the 2017 legislative session as HB 2609. During discussions on that bill a number of concerns were raised, and the bill did not move forward. During the interim the Work Group developed a revised proposal that addressed those concerns. SB 360 reflects the changes made to HB 2609 to address the issues raised. SB 360 clarifies and modernizes Oregon's nonprofit corporation code, improving the law for Oregon's nonprofit organizations. In addition, SB 360 includes several provisions that track similar provisions added to ORS Chapter 61 to combat abuses by anonymous shell corporations. The new provisions require more transparency and provide the state additional enforcement tools to combat fraud and other illicit activities.

In drafting SB 360, Legislative Counsel took the opportunity to modernize language in Chapter 65, updating language to conform to current style conventions for Oregon statutes. This Report indicates sections that improve language in that way without further explanation.

III. Senate Bill 360

Sections 1 and 2: Section 1 incorporates a new provision, set forth in Section 2, into Chapter 65. The new provision creates personal liability for an officer, director, employee or agent of a nonprofit corporation who causes a loss of money or property through a shell entity.

Sections 3 and 4: Section 3 incorporates a new provision, set forth in Section 4, into Chapter 65. The new provision creates a process for a board of directors to take action using electronic mail (email). Members of the Work Group noted that boards already take action in this way even though current law does not recognize the validity of such action. The new section also states that directors can also use email to discuss matters that come before the board, without following the requirements for taking board action. With this proposed addition, there will be three ways for boards to take action: a meeting at which the board votes, a unanimous written consent signed by all directors under ORS 65.341, or a vote by email.

Under the new provision, a board can take action by email only if the corporation has an email address for every director. If all directors can be contacted by email, then the corporation must follow the requirements in the new section for the action to be effective. First, an email announcing that a vote will be taken must be sent to each director. The email must include a description of the matter and a deadline for the vote, which must be at least 48 hours from the time of the email. The directors can then vote by email, and a director can change the director's vote at any time before the deadline. An affirmative

vote of a majority of directors in office is effective as an act of the board, with the same effect of as a vote taken at a meeting. The effective date will be the deadline specified in the announcement, or such other date provided in the announcement.

If the board of directors uses electronic mail to take action, under ORS 65.771(1), the results of the vote must be kept, and under ORS 65.774(2)(a) excerpts may be inspected by members. The Work Group discussed making available any discussion of the issue being voted on, so that a member who would have chosen to attend a meeting of the directors would not be disadvantaged by the taking of the action by email. However, a determination of which emails relate to the issue voted on would be difficult and unduly burdensome, and the Work Group concluded that the record keeping and disclosure required by ORS 65.771 and 65.774 are adequate.

Sections 5 and 6: Section 5 incorporates a new provision, set forth in Section 6, into Chapter 65. The Work Group sought to address the not infrequent problem of a nonprofit corporation that was set up to have voting members but no longer has a record of members, has not had member action for some years, and has no way to determine who members are. The bill makes it easier for a corporation to convert to a corporation with no voting members, while still protecting the rights of any members that exist. The proposal adds two new mechanisms, the provision in Section 6 of the bill and an amendment to ORS 65.038, which appears in Section 11.

Section 6 provides that if a nonprofit corporation has voting members, but for at least three years no meeting of the members has been held and no members have actively participated in the corporation, then the directors can amend the Articles to convert the corporation to one without voting members. The corporation must provide notice to known members and post notice on its website. The corporation cannot proceed using this process if a member objects within 30 days of the date of the notice.

Section 7: This section updates 65.001, the definitions section. A number of definitions are amended or added. In addition, the language in many definitions is amended to use more modern language or to be consistent with the current legislative drafting style for the Oregon statutes. These comments will not address changes that clean up the language but do not make substantive changes.

Appointed director. A new definition of appointed director provides for a director who is appointed by someone other than the board. This definition and a definition of a designated director were created so that the provisions on the election of directors could be written more clearly.

Articles of merger. A new definition is created for articles of merger, tying the definition to the rules in ORS 65.491.

Bylaws. Bylaws provide a corporation's rules for managing and regulating its affairs. Changes in the definition emphasize this role for the bylaws, providing better guidance for those managing or advising nonprofit corporations.

Contact information. The term contact address is changed to contact information and has been updated to reflect the ways a member or director can receive notice from the corporation. A member or director can choose to provide the corporation with a street address, a mailing address, or an email address. Thus, a person can choose to use an electronic or physical address for notice. The statute leaves the decision to the member or director so that a person concerned about personal safety need not disclose a physical address.

Designated director. This new definition describes a director who serves by virtue of being named in the articles or bylaws, or because the person holds a position that is named in the articles or bylaws. For example, the articles of a nonprofit corporation created to help at-risk youth might designate the person serving as the principal of the local high school as a director. Whoever serves as principal would also serve as a designated director of the corporation, and when a new principal comes into that position, the new principal will replace the outgoing principal as a director.

Director. Director is defined more clearly, using the new terms appointed director and designated director to include those directors with elected directors.

Distribution. The term distribution is important in the context of a nonprofit corporation, because a key element of being a nonprofit corporation is that the corporation cannot make distributions to a person for a private purpose. Called the non-distribution constraint, this requirement means that a nonprofit corporation cannot distribute profits to its members or directors. However, a nonprofit corporation can pay reasonable compensation for services or goods and can make payments to individuals when carrying out its nonprofit purposes. The definition is rewritten to clarify this important meaning of distribution.

Document. A new definition for document provides for both tangible documents and electronic documents.

Gift instrument. The new definition of gift instrument comes from the Uniform Prudent Management of Institutional Funds Act. *See* ORS 128.316(3).

Member. The definition of member is changed. Under current law, a member is someone who can vote for a director. Under the bill, a member is someone entitled to exercise any of the rights identified in ORS 65.144. These rights are the list of rights members have unless the articles or bylaws remove any of those rights. Because the rights are default rights, a member is defined as someone who has at least one of those rights. Thus, under the amended definition a corporation could, for example, decide to give its members the right to vote to dissolve the corporation, but not to elect directors.

The definition also lists a number of rights that, by themselves, will not make a person a member. These exclusions exist in current law; the language is clarified.

Mutual benefit corporation. The definition has been changed to clarify the distinctions between the three types of nonprofit corporations and to facilitate selection of the type of nonprofit corporation that corresponds to the corporation’s purposes.

Shell entity. The definition of shell entity refers to ORS 65.661, which is amended to add a description of a shell entity.

Sign. The bill adds a definition of sign that encompasses electronic signatures.

Vote. The term vote is expanded to include any method a corporation specifies as an authorization.

Written. A new definition explains that written means embodied as a document. The term document includes electronic documents, so this new definition can be used to clarify that a requirement that something be written can be met using an electronic writing.

Section 8. ORS 65.004 sets forth requirements for documents filed by the Secretary of State. In another of the changes addressing abuse by shell entities, the bill adds a requirement that the person signing a document to be filed must declare under penalty of perjury that the document does not fraudulently conceal or misrepresent the identity of the person signing or of someone connected with the corporation.

Sections 9-14. These sections improve language in ORS 65.014, 65.017, 65.021, 65.024, 65.027, and 65.031.

Section 15. This section amends ORS 65.034, the notice provision. The amendments provide the rules for effective notice that apply throughout Chapter 65. The bill updates the notice provision to include the types of notice currently used. For example, the reference to notice by “telegraph or teletype” is deleted, and more specificity concerning electronic notice is added.

Notice may be delivered orally (in person or by telephone) or in writing (electronically, by mail or by private carrier). The statute includes effective date rules for each type of notice: (1) oral notice is effective when communicated; (2) electronic notice is effective on the earlier of when it is received or two days after it is sent; and (3) written notice delivered by mail or private carrier is effective on the earlier of five days after it is mailed or the date of receipt if sent by certified or registered mail. Notice will be correctly addressed if addressed to the address shown on the records of the corporation for the director or member. The corporation can provide in the Articles and Bylaws for alternative notice rules for members or directors, if the alternative notice provisions are more stringent than the rules required by ORS 65.034.

Section 16. As explained in connection with Section 6, a corporation may have begun as a member organization but after some period of time may find itself unable to identify its members. Section 6 provides one method for converting to an organization without

voting members, and Section 16 amends ORS 65.038 to provide another method. ORS 65.038 currently provides that a court can call a meeting of the members, delegates, or directors of a corporation and that authority remains, but is expanded.

If the corporation cannot identify its members, delegates, or directors or is unable to call a meeting of members, delegates, or directors or otherwise obtain consent from any of them for actions on behalf of the corporation, a director, officer, delegate, member or the Attorney General can petition the court for relief. The court can direct the corporation to call a meeting of the members, delegates, or directors, as under current law, and in addition the court can determine who the members or the directors are, or the court can amend the articles to state that the corporation does not have members.

Section 17. This section updates ORS 65.040, the notice provisions to the Attorney General, to include notice of the commencement of a proceeding under ORS 65.174, under which a proceeding is brought on behalf of the corporation to procure a judgment for the corporation.

Sections 18-19. These sections improve language in ORS 65.047 and 65.057.

Section 20. A new subsection is added to ORS 65.061, clarifying that with respect to managing or regulating the affairs of the corporation, the Articles control over the Bylaws, and the Bylaws control over any other document. The Work Group was aware of some confusion on the issue of the hierarchy of authority, and although the Work Group does not view the new subsection as changing existing law, the Work Group thought the new subsection would be helpful to those who manage or advise nonprofit corporations.

Section 21. This section improves language in ORS 65.064.

Section 22. This section amends ORS 65.074 to add that a person may not incorporate for an illegal purpose or to fraudulently conceal a business activity from a person or governmental agency. This change is one of the changes related to shell entities.

Sections 23-27. These sections improve language in ORS 65.094, 65.097, 65.101, 65.114, and 65.117.

Section 28. A new provision added to ORS 65.131 states that a nonprofit corporation cannot give a document to an unidentified individual or entity, creating membership rights in the person holding the document. This change relates to shell entities.

Section 29. This section improves language in ORS 65.134.

Section 30. This section changes ORS 65.137 to reverse the default rule for whether a nonprofit corporation has members. The Work Group discussed the common misunderstanding about membership in nonprofit corporations. A new nonprofit corporation may decide it wants to have members so that the members will pay dues,

without realizing the role voting members play in an organization. Alternatively, a corporation may intend to have members who actively participate as voting members but over the years may find it cumbersome to have voting members and may stop having member meetings and votes. If a corporation's articles state that it has members, but the nonprofit operates as if it does not have members, the legal functioning of the nonprofit is at risk. If the members do not elect the directors, then the directors may be acting without authority.

Under current law, the default rule is that a nonprofit corporation has members unless the articles provide otherwise. The Work Group concluded that the better default rule—the rule that will apply if the articles do not provide otherwise—is that a corporation will not have members unless the articles state that the corporation does have members.

Section 31. The Work Group sought to make the voting rights of members easier to understand. In current law, provisions regarding voting rights are spread throughout Chapter 65. Section 31 amends ORS 65.144 to create a list of voting rights of members. The list is non-exclusive, but captures most of the rights members have, unless the corporation provides otherwise in its articles or bylaws.

Amended ORS 65.001(30) (Section 7 of the bill) ties the definition of member to ORS 65.144, stating that a member is someone who has one or more of the rights enumerated in this section. Two rights are mandatory and cannot be changed by the articles and bylaws: (1) the right to vote on an action that would reduce or eliminate the member's right to vote, and (2) the right to inspect and copy the corporation's records, as provided (and limited) in ORS 65.774. Other than those two rights, amended ORS 65.144 gives each nonprofit corporation control over its structure and the rights of members. The Work Group concluded that each corporation should be able to make its own determinations about what is best.

The rights enumerated in ORS 65.144 will apply to all members, unless the articles or bylaws of a corporation provide otherwise. These are rights members have under current Chapter 65, modified in some cases by this bill, so an existing corporation that wants to limit any of these rights would need to do so with a vote of the members, as provided in ORS 65.144(2).

The rights listed in ORS 65.144(1) will be default rights, the rights members have if the articles and bylaws do not provide otherwise. The rights listed are the rights to (1) elect directors, (2) remove directors, (3) vote on any change to the number of directors, (4) vote to dispose of, through sale or otherwise, the corporation's assets or to merge with another entity, (5) vote to dissolve the corporation, and (6) approve a conflict of interest transaction (for a mutual benefit corporation).

Section 32. This section improves language in ORS 65.147.

Section 33. Current ORS 65.154 provides that membership can be terminated for failure to pay dues. Section 33 adds language clarifying that a decision to suspend or terminate membership for failure to pay dues can be made without a hearing.

Section 34. This section clarifies language in ORS 65.167 that provides procedural rules for removing members. Any procedure must be fair and reasonable, and the statute provides two ways of structuring a procedure to be fair and reasonable.

Section 35. This section improves language in ORS 65.171.

Section 36. This section adds a subsection to ORS 65.174, clarifying that the Attorney General is also authorized to bring a derivative proceeding to procure a judgment for a public benefit corporation or a religious corporation.

Section 37. This section improves language in ORS 65.177.

Section 38. ORS 65.204 permits members to call a special meeting. The statute currently provides that if notice is not given within 30 days of the demand for a special meeting, the members demanding the meeting may set it themselves. A new provision also gives them that right if the date of the special meeting is not set within 30 days of the notice. The organization should set the meeting within 60 days of the request for a meeting.

Section 39. This section improves language in ORS 65.207.

Section 40. ORS 65.211 provides for action without a meeting and requires unanimous consent for an action taken without a meeting. Changes in the language clarify that the articles or bylaws can provide that an organization can take a vote without a meeting but cannot provide for a less-than-unanimous vote. This section includes a cross-reference to Section 4 of the Act, which creates a new method of taking action. If the corporation complies with the requirements for taking action using a vote by email, as set forth in Section 4, the decision need not be unanimous.

Section 41. This section removes a requirement in ORS 65.214 that notice to members of meetings be given “no fewer than 30 days nor more than 60 days” if notice is mailed “by other than first class or registered mail.” Instead, notice must be made in accordance with the notice provision in ORS 65.034, which includes electronic notice, and notice must be given no fewer than seven days before a meeting.

Section 42. This section improves language in ORS 65.217.

Section 43. ORS 65.222 provides the process for voting by written ballot. Because “written” is defined to include electronic writings, ballots may be submitted electronically. The current statute provides that approval is valid only if the number of votes cast equals or exceeds the quorum required to be present at a meeting. This leaves ambiguous the situation in which the number of members who attend a meeting

constitutes a quorum. Section 43 adds a subsection to 65.222 clarifying that the number of votes cast by ballot constitutes a quorum if the number of members present at a meeting constitutes a quorum.

Section 44. Under ORS 65.224 a nonprofit corporation must maintain a list of its members, and each member has the right to inspect the list. Due to concerns that a member might need to keep the member's physical address secret for personal safety reasons, Section 44 amends ORS 65.224 to provide that the list must contain "contact information" for each member, rather than an address. Contact information is defined in ORS 65.001 and includes an email address. Section 44 also removes the requirement that the list of members be alphabetical.

Section 45. This section improves language in ORS 65.227. It deletes the statement that a person who cannot vote to elect directors is not a member, to conform to changes in the definition of member in ORS 65.001(30).

Section 46-48. These sections improve language in ORS 65.231, 65.241, and 65.244.

Section 49. This section rewrites ORS 65.247(3), the subsection that explains removal of a director elected by cumulative voting, for clarity.

Section 50. This section improves language in ORS 65.251.

Section 51. This section amends ORS 65.301, clarifying that the board of directors can delegate corporate powers but retains authority over an exercise of power the board delegates or authorizes.

Section 52. ORS 65.311 provides rules for the election of directors. Section 52 adds a new subsection clarifying that if a corporation has no directors and no members who can elect directors, the Attorney General can ask a court to appoint one or more directors. Occasionally a nonprofit corporation will have assets or liabilities remaining but all directors will have resigned or are facing removal. Rather than require dissolution of a nonprofit in those circumstances, it would be beneficial to have the option of authorizing the court to appoint a new board of directors at the request of the Attorney General. An analogous provision for charitable trusts can be found at ORS 130.615(4).

Sections 53-54. These sections improve language in ORS 65.314 and 65.317.

Section 55. This section makes a number of changes to the provisions in ORS 65.324 regarding the removal of directors. The rules for removal of member-elected directors by members are made subject to the articles and bylaws of the corporation.

The number of votes required for removal by members is amended to be a majority of votes cast. Removal by directors is changed to a majority of directors in office or by a greater number set forth in the articles or bylaws.

The articles or bylaws can provide that a director can be removed for specified reasons, and Section 55 clarifies that one reason can be missing more than a specified number of meetings. Unchanged is the requirement that any specified reason will apply to a director only if the articles or bylaws provide for removal on that ground at the time the director's term began.

Section 56. ORS 65.327 provides rules for removal of a director by a court, at the request of the corporation, at least 10% of the members, or the Attorney General. Section 56 adds a violation of ORS 65.377 (standards of conduct for officers) as a reason for removal.

Section 57-59. This section improves language in ORS 65.331, 65.334, and 65.335.

Section 60. This section clarifies the meaning of a regularly scheduled meeting, which does not require additional notice to directors. Under ORS 65.337, a nonprofit corporation can permit a director to participate through a form of communication if all directors can simultaneously communicate with each other. The Work Group did not change the requirement that directors be able to simultaneously communicate, because in connection with a meeting, simultaneous communication is critical. The Work Group is aware that technology will continue to change, so the statute can simply provide for "simultaneous communication" and that will cover changes in technology. Under current technology, a director can participate by conference call or Skype, but not by email, because email does not permit simultaneous communication.

Section 61. This section improves language in ORS 65.341. The definitions of electronic, sign, and written have been moved from ORS 65.341 to the definitions section, ORS 65.001, because they now apply to additional sections.

Section 62. This section improves language in ORS 65.344 and clarifies the notice requirements for regular and special meetings of the board of directors.

Section 63. This section clarifies that in ORS 65.347 a director's waiver of notice of a meeting may be transmitted electronically.

Section 64. This section amends ORS 65.351 to provide that a quorum consists of a majority of directors in office immediately before the meeting begins. The articles or bylaws can provide otherwise, but cannot provide for a quorum of less than one-third of the directors in office immediately before the meeting. The current statute sets the default rule for a corporation with a fixed number of board members at a majority of the fixed number, rather than a majority of those in office. The language for a corporation with a variable range for its board is confusing and is clarified to set the quorum at a majority of the directors in office. This section also adds a statement clarifying that each director has one vote and may not vote by proxy.

Section 65. This section modifies ORS 65.354 to clarify that all voting members of committees exercising the authority of the board must be directors. A new subsection

provides that the board can create committees that do not exercise the authority of the board and these committees can have members who are not directors or members of the corporation. The current statute seems to assume the use of these other committees, but clarification will improve understanding.

Section 66. Directors are fiduciaries who are bound by the common law duties of care, loyalty, and obedience. ORS 65.357 describes the duties of care and loyalty. These duties require a director to act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation. These duties have been described as applying a corporate rather than a trust standard to the directors, although the duties should be understood in the context of a nonprofit corporation rather than a for-profit corporation.

At the time the Revised Model Nonprofit Corporation Act (RMNCA), which formed the basis for Chapter 65, was developed, there was concern that courts would apply trust law standards to directors of charities formed as nonprofit corporation. For that reason, the RMNCA included a subsection stating that a director would not be deemed to be a trustee. This proposal deletes that subsection because the understanding that a nonprofit corporate standard applies to directors is now well accepted and because some directors have used the subsection being deleted to argue that fiduciary standards do not apply to them. Moreover, though the RMNCA recognized that a nonprofit corporation acting as trustee of a trust would still have all the rights and responsibilities of a trustee, some have attempted to use this provision to argue otherwise. Because nonprofit corporations do sometimes serve as trustees, the corporation as a whole may be liable for a breach of trust, though the corporation cannot seek contribution or indemnification from an individual director. The deletion is not intended to suggest that a trust standard applies to individual directors of nonprofit corporations. The standards continue to be the same as under the current statutes.

Section 67. A corporation can enter into a conflict of interest transaction with a director, without risk that the transaction will be voidable or the director will be liable, if the transaction is fair to the nonprofit corporation. The statute creates a presumption of fairness if the corporation follows a procedure that involves disclosure of the material facts of the transaction and the director's interest. Approval by the Attorney General or a court also creates a presumption of fairness. Section 67 amends ORS 65.361 to clarify that to avoid liability the transaction must be fair to the nonprofit corporation, and that the process outlined in the statute creates a presumption of fairness, but not a safe harbor.

Section 67 adds a new subsection that clarifies that a director has an indirect interest in a transaction involving a person related to a director or a business associate of a director.

Section 68. This section improves language in ORS 65.364.

Section 69. This section amends ORS 65.371 to require that each nonprofit corporation have a treasurer in addition to a president and secretary. Section 69 does not change the

rule in the current statute that the same individual may simultaneously hold more than one office, but Section 69 adds a requirement that the same individual may not serve simultaneously as the president, secretary and treasurer. Section 69 also clarifies that an officer need not be a director.

Sections 70-73. These sections improve language in ORS 65.377, 65.381, and 65.431.

Section 73. Under ORS 65.434, if a corporation does not have members entitled to vote on amendments to the articles of incorporation, the directors can adopt amendments. Section 73 changes the requirement of a majority vote of directors in office to a majority vote of the directors who attend the meeting.

Section 74. Under current law, several actions by members required action by the lesser of two-thirds of the votes cast or a majority of the voting power. For mutual benefit corporations, the two-thirds requirement makes sense because changes by members can affect members' rights, and the super-majority requirement protects those rights. However, many public benefit and religious corporations have a large number of inactive members whose personal interests are not affected by votes of members. For those corporations, meeting this requirement can be difficult. ORS 65.437 provides rules for amending articles of incorporation, and Section 74 reduces the requirement for member voting for public benefit and religious corporations to a majority of the votes cast. The super-majority rule continues to apply to mutual benefit corporations.

Section 75. ORS 65.441 provides rules for members of a class entitled to amend articles of incorporation, and Section 75 reduces the requirement for voting for public benefit and religious corporations to a majority of the votes cast.

Sections 76-77. These sections improve language in ORS 65.447 and 65.451.

Section 78. Section 78 removes the restriction that a proceeding brought by the Attorney General under ORS 65.454 to correct the articles of incorporation be commenced in Marion County.

Section 79. ORS 65.461 provides the rules for amendments to bylaws by directors when a corporation has no members with the power to vote on bylaws. Section 79 removes the possibility that the articles or bylaws could provide different rules, making the rules in ORS 65.461 mandatory.

Section 80. This section adds to ORS 65.464 a reference to ORS 65.241 and 65.244, which limit the ability of the board of directors to change the bylaws in ways that affect members' rights, if the members have voting authority under those sections.

Section 81. This section improves language in ORS 65.467.

Section 82. This section clarifies ORS 65.484 with respect to the merger of a public benefit corporation or a religious corporation. This section changes the time the

corporation must notify the Attorney General from at least 20 days before consummation of the merger to at least 20 days before the corporation files articles of merger. The current statute requires notice to the Attorney General only when a public benefit or religious corporation merges with a business corporation or mutual benefit corporation. Section 46 removes that limitation, so notice is required for any merger involving a public benefit or religious corporation.

Section 83. ORS 65.487 provides the rules for voting on mergers. Current law for action by members requires the lesser of two-thirds of the votes cast or a majority of the voting power. Section 47 changes that requirement for public benefit and religious corporations to a majority of the votes cast, and makes the same change if voting by a class of members is required. The super-majority requirement for mutual benefit corporations remains the same. Current law for action by directors requires a majority of the directors in office. Section 47 changes that requirement to the voting requirements that otherwise apply to action by the board, typically a majority of the directors present, unless the articles, bylaws, directors or members require a greater vote.

Section 84. ORS 65.491 requires that after a merger has been approved, the surviving corporation must deliver articles of merger and several declarations to the Secretary of State for filing. The merger takes effect when the Secretary of State files the articles, so the merger will not be effective until all the declarations are delivered to the Secretary of State. Section 84 adds a requirement that the surviving corporation file a written declaration that states that the Attorney General approved the plan, if the plan required approval.

Section 85. This section adds a new subsection to ORS 65.494, stating that in a merger, the surviving corporation remains subject to any restriction that a gift instrument imposes on assets held by any party to the merger. This provision was moved from ORS 65.501.

Section 86. ORS 65.534 provides the voting rules for the sale or disposition of all or substantially all of a corporation's property. Current law for action by members requires the lesser of two-thirds of the votes cast or a majority of the voting power. Section 86 changes that requirement for public benefit and religious corporations to a majority of the votes cast. The super-majority rule for mutual benefit corporations remains unchanged. Current law for action by directors requires a majority of the directors in office. Section 86 changes that requirement to the voting requirements that otherwise apply to action by the board. Section 86 also changes the requirement of notice to the Attorney General by public benefit and religious corporations from 20 days to 30 days. The Work Group concluded that this change would give the Attorney General a little more time to investigate and take action if necessary and would not pose a significant hardship to a corporation disposing of its assets. The Attorney General can waive the notice requirement, so if a corporation needs to sell property quickly, the corporation can request a waiver.

Sections 87-88. These sections improve language in ORS 65.554 and 65.621.

Section 89. The same voting changes discussed in connection with Section 86 are made by Section 89 to ORS 65.624, which provides for voting in connection with dissolution. Section 89 also authorizes the board of directors to approve a dissolution even if the board does not have a quorum. Sometimes a corporation that needs to dissolve no longer has the number of directors required by its articles and there has been concern about whether the remaining director(s) have the legal authority to proceed with dissolution process. The Work Group felt that it was appropriate that the remaining director(s) should be allowed to wind-up the corporate operations in an orderly fashion without fear of reprisal or liability in such circumstances.

Section 90. When a public benefit corporation dissolves the assets that had been held by the corporation must be used to pay creditors and then must be distributed to another public benefit corporation. The Attorney General is responsible for protecting charitable assets, and Section 90 amends ORS 65.627 to strengthen the ability of the Attorney General to protect charitable assets.

Section 90 moves the requirement regarding the transfer of assets to the beginning of ORS 65.627, to emphasize that assets cannot be transferred until a period of time has elapsed after notice to the Attorney General or the Attorney General has, in writing, consented to the transfer or indicated that the Attorney General would not take action. The time period is increased from 20 days to 30 days.

At the end of the dissolution process, after the corporation has transferred its assets, the corporation must provide the Attorney General with a list showing the names and addresses of the persons who received property from the corporation. Current law does not require that creditors be included on that list, and Section 90 amends ORS 65.627(3) to remove the exclusion of creditors. The intention is that creditors as well as donee organizations be listed when a corporation dissolves. The Attorney General has seen corporations attempt to disguise transfers to private persons for private benefit as payments to creditors. It is hoped that by requiring that all transfers be listed, such improper transfers and loss of charitable assets into private hands will be reduced.

Sections 91-93. These sections improve language in ORS 65.631, 65.634, and 65.637.

Section 94. ORS 65.644 provides that if a dissolved nonprofit corporation publishes notice about how to present claims to the corporation, claims will be barred after five years. Section 94 adds a new subsection that permits a corporation to publish the notice on its website or in another location where the corporation maintains an electronic presence. The website must remain accessible to the public for at least 30 days.

Section 95. ORS 65.661(1)(a) lists the findings that can lead a court to dissolve a corporation in a proceeding brought by the Attorney General. Section 95 adds new reasons a court can dissolve a corporation: fraudulent intent or the use of fraudulent information in filing articles (this change is a clarification); for public benefit corporations, a finding that the Internal Revenue Service revoked the corporation's tax-

exempt status; and a finding that the corporation is a shell entity. ORS 65.661(1)(F) provides the definition of shell entity that applies here and throughout Chapter 65.

ORS 65.661(3) adds as consequences to a finding that a corporation was a shell entity the ability for the Attorney General to get fees and costs, and authorization for a public body to enjoin a director or other person connected with the shell entity from organizing another corporation in the state. ORS 65.661(4) provides a process for a corporation to defend against an allegation that it is a shell entity.

Section 96. Current ORS 65.664 provides that venue for a proceeding brought by the Attorney General lies in Marion County. Section 96 adds Multnomah County, the county where a corporation's principal office is located or, if the principal office is not in this state, where its registered office is or was last located. The Charitable Activities Section is located in Multnomah County, as are the majority of nonprofits, and updating this venue provision is consistent with other civil proceedings.

Section 97. This section clarifies in ORS 65.667 that the Attorney General can request the appointment of a receiver for a nonprofit corporation outside the context of a dissolution proceeding. The Oregon Rules of Civil Procedure and common law provide for the appointment of a receiver in other contexts and this change better reflects the Attorney General's and court's authority with respect to nonprofit corporations.

Sections 98-104. These sections improve language in ORS 65.671, 65.707, 65.711, 65.717, 65.724, 65.727, and 65.734.

Section 105. ORS 65.751 lists the findings that can lead a court to revoke the authority of a foreign corporation to transact business in the state. Section 105 makes the same changes to this section that Section 95 of the bill makes to ORS 65.661(1)(a), which lists the findings that can lead a court to dissolve a domestic corporation.

Section 106. This section improves language in ORS 65.757.

Section 107. Under ORS 65.771, a nonprofit corporation with members must maintain a list of its members. Current law requires a name and address for each member. Section 107 changes the requirement to a name and contact information. The reason for the change is to permit a person to provide an electronic address rather than a physical address so that a person concerned about personal safety need not disclose a physical address. Section 107 also removes the requirement that the list of names be in alphabetical order because that requirement has been a burden for some corporations with limited financial resources and large membership and has been a source of technical challenges to corporate compliance by members.

ORS 65.771 also changes the requirement to maintain a list of the names and addresses of directors and officers to a requirement to maintain a list of names and contact information. A new subsection in ORS 65.771 confirms the right of a director to inspect the records of a corporation.

Sections 108 - 112. These sections improve language in ORS 65.774, 65.782, 65.787 65.990, and 271.330.

Section 113. This section repeals ORS 65.501, because that provision was moved.

Section 114. The Act becomes operative on January 1, 2020. The Secretary of State and Attorney General may adopt rules and take other actions prior to the operative date to be ready to exercise their powers provided under this Act on and after the effective date.

Section 115. The effective date for the Act is the date it is passed. After the effective date, the Secretary of State and the Attorney General may take necessary actions, but the provisions of the Act will not be operative until January 1, 2020.