

SB 359 A STAFF MEASURE SUMMARY

Carrier: Rep. McLane

House Committee On Judiciary**Action Date:** 04/30/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 8-0-3-0**Yeas:** 8 - Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Stark, Williamson**Exc:** 3 - Barker, Power, Sprenger**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 4/22, 4/30**WHAT THE MEASURE DOES:**

Establishes process for correcting defective corporate actions for both private corporations and nonprofit corporations. Provides definitions. Specifies that a board of directors may ratify a defective corporate action by providing proper notice identifying the defective action, the date on which the action occurred, the nature of the defect, and a statement on the board's intention to ratify the action. Allows ratification of action that relates to election of the board through additional process. Requires the board to submit ratification to shareholders for approval. Specifies that quorum and voting requirements that applied to the board at the time of the defective action also apply in taking action to ratify. Specifies process for shareholder vote notice. Specifies process for voting on ratification of putative shares. Requires filing articles of validation with Secretary of State for corrections of defective action. Specifies content of filing. Provides authority to circuit court to determine validity of actions or corrections. Provides legal process for person to bring action for determination or modification of defective action.

ISSUES DISCUSSED:

- Examples of defective corporate actions
- Overissuance of stock most common defective corporate action
- Efforts of Oregon State Bar Task Force
- No provisions for ratifying illegal actions
- Preservation of rights of third party

EFFECT OF AMENDMENT:

Resolves conflicts with Senate Bill 360.

BACKGROUND:

Oregon has over 451,000 private corporations registered through the Oregon Secretary of State's office and had 5,000 new business filings in December, 2018. In addition, nearly 33,000 active nonprofit corporations operate in Oregon. In some cases, a business may be started without following the careful procedures outlined in the Oregon Revised Statutes, and at a later time, errors may come to light. Some errors may be corrected through action by the board of directors, but the statutes do not provide a clear process for correcting defective corporate actions.

Senate Bill 359 A provides an extensive process for later approval or ratification of defective corporate actions.