

B-Engrossed
Senate Bill 185

Ordered by the House May 27
Including Senate Amendments dated March 8 and House Amendments
dated May 27

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Nonprofit Organizations Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that, and specifies procedures and circumstances under which, members of nonprofit corporation and board of directors of nonprofit corporation may discuss issues or take action by **electronic mail or other** electronic means without meeting. **Provides that affirmative vote of majority of board of directors to approve action under specified circumstances is act of board of directors and is effective on date specified in electronic mail announcement.**

Specifies circumstances under which majority of directors may approve dissolution if number of directors in office at time at which directors consider dissolution is less than required by laws of this state or by articles of incorporation or bylaws of nonprofit corporation.

A BILL FOR AN ACT

1
2 Relating to the governance of nonprofit corporations; creating new provisions; and amending ORS
3 65.212 and 65.624.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 65.212 is amended to read:

6 65.212. (1) Unless a corporation's articles of incorporation or bylaws provide otherwise,[:]

7 [(a)] the corporation's [*board of directors*] **members** may, without a meeting, use electronic mail
8 or other electronic means to take action that this chapter otherwise requires or permits the [*board*
9 *of directors*] **members** to take at a [*board of directors*'] meeting if the corporation complies with this
10 section.

11 [(b) *The board of directors may, without complying with all of the requirements of this section, use*
12 *electronic mail to discuss, but not take action on, an issue that comes before the board.*]

13 (2)(a) Before taking an action under subsection (1) of this section, a corporation shall send to
14 the electronic mail address that each [*director*] **member** provided to the corporation for receiving
15 communications from the corporation an electronic mail announcement that states that the [*board*
16 *of directors*] **members** will take the action.

17 (b) The electronic mail announcement the corporation sends under paragraph (a) of this sub-
18 section must include a description of the matter on which the [*board of directors*] **members** will take
19 action. The electronic mail announcement must specify a deadline of not less than 48 hours after the
20 time the corporation sends the announcement in which a [*director*] **member** may record the
21 [*director's*] **member's** vote.

22 (c) The corporation shall include the electronic mail announcement described in this subsection
23 and a record of the [*directors*'] **members'** votes in the minutes for the [*directors*'] meeting or shall

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 file the announcement and record of the [*directors*] **members**' votes in documents that reflect the
2 action that the [*board*] **members** took.

3 (3) Notwithstanding subsection (1) of this section, a corporation's [*board of directors*] **members**
4 may not use electronic mail or other electronic means to take action if the corporation does not
5 have a record of an electronic mail address for a [*director*] **member**.

6 (4) A [*director*] **member** may change the [*director's*] **member's** vote at any time before the
7 deadline set forth in the electronic mail announcement described in subsection (2) of this section.

8 (5) An affirmative vote of the majority of the [*directors who hold office*] **members** at the time
9 the [*board of directors takes*] **members take** an action by means of electronic mail or by other
10 electronic means is an act of the [*board*] **members**, unless a corporation's articles of incorporation
11 or bylaws require an affirmative vote of a greater number of [*directors*] **members**. The [*board's*]
12 **members'** action under this subsection has the effect of a meeting vote and the corporation may
13 describe the action as a meeting vote in any document.

14 (6) The [*board of directors*'] **members'** action under subsection (5) of this section is effective on
15 the deadline specified in the electronic mail announcement described in subsection (2) of this sec-
16 tion, unless the announcement specifies a different effective date or time.

17 (7) **Unless a record date for determining members who may take an action without a**
18 **meeting under this section is set in accordance with ORS 65.207 or 65.221, the record date is**
19 **the date of the electronic mail announcement described in subsection (2)(a) of this section.**

20 (8) **Members may use electronic mail to discuss an issue that comes before the members.**

21 **SECTION 2.** ORS 65.624 is amended to read:

22 65.624. (1) Unless a corporation's articles of incorporation, bylaws or the board of directors or
23 members, acting in accordance with subsection (3) of this section, require a greater vote or voting
24 by class, dissolution is authorized if the dissolution is approved:

25 (a) By the board of directors;

26 (b) By the members of a mutual benefit corporation entitled to vote on dissolution, if any, by
27 at least two-thirds of the votes cast or a majority of the voting power, whichever is less, or by a
28 majority of the votes cast, if the corporation is a public benefit corporation or religious corporation;
29 and

30 (c) In writing, by any person or persons whose approval is required for an amendment of the
31 articles of incorporation or bylaws, as authorized by ORS 65.467, or for dissolution.

32 (2)(a) If the corporation does not have members entitled to vote on dissolution, the board of
33 directors must approve the dissolution [*and may do so even if the board does not have a quorum*]. In
34 addition, the corporation shall provide notice of any meeting of the board of directors at which such
35 approval is to be considered in accordance with ORS 65.344 (2). The notice must also state that the
36 purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and must
37 contain or be accompanied by a copy or summary of the plan of dissolution.

38 (b) **Even if the number of directors in office at the time the board considers the proposed**
39 **dissolution is less than the minimum required under this chapter, under the articles of in-**
40 **corporation or under the corporation's bylaws, a majority of the directors in office at the**
41 **time the board considers the proposed dissolution may approve the dissolution.**

42 (3) The board of directors may condition the board's submission of the proposed dissolution to
43 a vote of members, and the members may condition the members' approval of the dissolution on re-
44 ceipt of a higher percentage of affirmative votes or on any other basis.

45 (4) If the board of directors seeks to have dissolution approved by the members at a membership

1 meeting, the corporation shall give all members, whether or not entitled to vote, notice of the pro-
2 posed meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one
3 of the purposes, of the meeting is to consider dissolving the corporation and must contain or be
4 accompanied by a copy or summary of the plan of dissolution.

5 (5) If the board of directors seeks to have dissolution approved by the members by written
6 consent or written ballot, the material soliciting the approval must contain or be accompanied by
7 a copy or summary of the plan of dissolution.

8 (6) The plan of dissolution must indicate to whom the assets owned or held by the corporation
9 will be distributed after all creditors have been paid.

10 **SECTION 3. Section 4 of this 2021 Act is added to and made a part of ORS 65.337 to 65.351.**

11 **SECTION 4. (1) Unless a corporation's articles of incorporation or bylaws provide other-**
12 **wise, the corporation's board of directors may, without a meeting, use electronic mail or**
13 **other electronic means to take action that this chapter otherwise requires or permits the**
14 **board of directors to take at a board of directors meeting if the corporation complies with**
15 **this section.**

16 (2)(a) Before taking an action under subsection (1) of this section, a corporation shall
17 send to the electronic mail address that each director provided to the corporation for re-
18 ceiving communications from the corporation an electronic mail announcement that states
19 that the board of directors will take the action.

20 (b) The electronic mail announcement the corporation sends under paragraph (a) of this
21 subsection must include a description of the matter on which the board of directors will take
22 action. The electronic mail announcement must specify a deadline of not less than 48 hours
23 after the time the corporation sends the announcement in which a director may record the
24 director's vote.

25 (c) The corporation shall include the electronic mail announcement described in this
26 subsection and a record of the directors' votes in the minutes for the directors' meeting or
27 shall file the announcement and record of the directors' votes in documents that reflect the
28 action that the board took.

29 (3) Notwithstanding subsection (1) of this section, a corporation's board of directors may
30 not use electronic mail or other electronic means to take action if the corporation does not
31 have a record of an electronic mail address for a director.

32 (4) A director may change the director's vote at any time before the deadline set forth
33 in the electronic mail announcement described in subsection (2) of this section.

34 (5) An affirmative vote of the majority of the directors who hold office at the time the
35 board of directors takes an action by means of electronic mail or by other electronic means
36 is an act of the board, unless a corporation's articles of incorporation or bylaws require an
37 affirmative vote of a greater number of directors. The board's action under this subsection
38 has the effect of a meeting vote and the corporation may describe the action as a meeting
39 vote in any document.

40 (6) The board of directors' action under subsection (5) of this section is effective on the
41 deadline specified in the electronic mail announcement described in subsection (2) of this
42 section, unless the announcement specifies a different effective date or time.

43 (7) The board of directors may, without complying with all of the requirements of this
44 section, use electronic mail to discuss, but not take action on, an issue that comes before
45 the board.

