

Enrolled Senate Bill 185

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CHAPTER

AN ACT

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

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

SECTION 1. ORS 65.212 is amended to read:

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

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

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

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

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

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

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

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

(5) An affirmative vote of the majority of the [directors who hold office] **members** at the time the [board of directors takes] **members take** an action by means of electronic mail or by other

electronic means is an act of the [board] **members**, unless a corporation's articles of incorporation or bylaws require an affirmative vote of a greater number of [directors] **members**. The [board's] **members'** action under this subsection has the effect of a meeting vote and the corporation may describe the action as a meeting vote in any document.

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

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

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

SECTION 2. ORS 65.624 is amended to read:

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

(a) By the board of directors;

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

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

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

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

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

(4) If the board of directors seeks to have dissolution approved by the members at a membership meeting, the corporation shall give all members, whether or not entitled to vote, notice of the proposed meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

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

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

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

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

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

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

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

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

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

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

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

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

Passed by Senate March 11, 2021

Repassed by Senate June 8, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2021

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State