

SB 360 A STAFF MEASURE SUMMARY**Carrier:** Sen. Bentz**Senate Committee On Judiciary****Action Date:** 03/04/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 6-0-1-0**Yeas:** 6 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski**Exc:** 1 - Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 2/4, 3/4**WHAT THE MEASURE DOES:**

Updates laws on governance of nonprofit corporations. Allows electronic communication and notice. Specifies process for taking action through electronic means. Provides definitions relating to shell corporations. Specifies process for court determination that corporation is a shell entity. Attaches liability for losses created by shell corporation. Specifies that no corporation may be formed for an illegal or fraudulent purpose. Provides that articles of incorporation control when in conflict with bylaws. Allows order for determination of board and members to be conducted in Multnomah County, in addition to Marion County. Provides that electronic notice is effective at the earlier of when the notice is received or two days after the notice is sent, if properly addressed. Separates “director” into three possible types: appointed director, designated director, or elected director. Lists specific rights of members unless specified otherwise in bylaws or articles of incorporation. Specifies process for determining if a quorum of members is present. Updates process for removal of a director installed by cumulative voting. Allows formation of committees to advise the board of directors. Prohibits one individual from simultaneously serving as president, secretary, and treasurer of public benefits corporation. Updates process for merger of corporations. Declares right of director to inspect records of corporation. Operative January 1, 2020; declares emergency, effective on passage.

ISSUES DISCUSSED:

- Lack of updates to Nonprofit Corporations Act since enactment in 1989
- Work group on nonprofit law update through Nonprofit Organization Law Section
- Need for modernization, including use of e-mail and electronic communications to conduct business
- Need to identify and take action against shell corporations

EFFECT OF AMENDMENT:

Modifies provisions relating to requirements after taking action without meeting, so long as action is taken in conformance with new provisions for electronic actions. Changes voting on amendments to bylaws or articles of incorporation to be by a majority of directors voting on the amendment, rather than a majority of directors in office at the time of the vote.

BACKGROUND:

The Nonprofit Corporations Act, Chapter 65 of the Oregon Revised Statutes, was adopted in 1989 and governs the formation and procedures of nonprofit corporations created and operating in Oregon.

Senate Bill 360 A is the result of a multi-year effort from the Oregon State Bar’s Nonprofit Organizations Law Section to provide an update to the Nonprofit Corporations Act. The measure modifies Chapter 65 in a number of ways in order to modernize governance and process for nonprofits. SB 360 A allows meetings to occur and board actions to be taken via e-mail, so long as there is a valid e-mail address for every director on the board and the

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board follows the procedures outlined in the measure. In regards to shell corporations, the measure prohibits incorporation of a nonprofit for an illegal purpose or to fraudulently conceal business activities, and requires that a person filing the documents of incorporation with the Secretary of State must declare under penalty of perjury that the documents do not fraudulently conceal or misrepresent the identity of the person signing or someone connected to the corporation. The measure also extends personal liability to officers, directors, employees, or agents of a nonprofit corporation who cause a loss of money or property through a shell corporation. Additional changes include clarifying the hierarchy of authority between Articles, Bylaws, and other documents; adding a new method for converting from a corporation with voting members to a corporation without voting members; and clarifying the voting rights of members.