

**OREGON STATE BAR  
LEGISLATIVE PROPOSAL  
Part I – Legislative Summary**

**Re: Chapter 65 Amendment**

**Submitted by:** Nonprofit Organizations Law Section

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**1. Does this amend current law or program? Yes  No  Specify**

This bill amends ORS Chapter 65 which was updated by the OSB Nonprofit Organizations Section during the 2019 legislative session through SB 360.

**2. Problem Presented:**

The 2019 legislature enacted SB 360, which modernized and clarified language in Chapter 65, Oregon's Nonprofit Corporation Code. Lawyers have identified the need for two technical corrections and would also like to add statutory provisions authorizing domestication of a nonprofit corporation. A nonprofit organized in another state can move to Oregon only if the nonprofit terminates existence in

**3. Solution:**

The proposal makes two technical corrections and proposes new statutory provisions with requirements for the domestication of a nonprofit moving to or from Oregon.

**Nonprofit Organizations Law Section  
Proposed Changes to Chapter 65**

In 2019, the Oregon Legislature adopted SB 360, a bill that clarified and modernized language in Chapter 65 of the Oregon Revised Statutes – the Nonprofit Corporation Code – to improve the functioning of nonprofit corporations operating in Oregon. Since then, lawyers have identified the need for two technical corrections and one addition to Chapter 65.

A Work Group appointed by the Executive Committee of the Nonprofit Organizations Law Section (NOLS) of the Oregon State Bar worked on this proposal. Members were David Atkin, Warren Binford, Susan Bower, Cindy Cumfer, Elizabeth Grant, Marisa Meltebeke, Shouka Rezvani, Meliah Schultzman, Michele Wasson, and Jim White. Susan Gary, Professor of Law at the University of Oregon, served as the Chair of the Work Group and Reporter for the project. The Work Group includes members from small and large law firms, the Charities Section of the office of the Attorney General, and the Nonprofit Association of Oregon.

## **I. Use of Email to Take Action without a Meeting**

The intent of the 2019 changes was to permit both members and directors to take action without a meeting, using email or some other electronic tool, and without unanimous consent. There are two aspects of the changes we would like to fix. First, the change was intended to apply to both members and directors. As it appears in the statute, the language that appears in the statute appears in the “members” part of Chapter 65 but describes directors. It does not appear in the “directors” part of the statute. The first change needed is to change “directors” to “members” in 65.212 and to add similar language in the part of the statutes related to actions by directors.

Second, a structural (drafting) change will help with clarity. The concept is that there are now two ways to take action without a meeting. One is using unanimous consent, and one is through the new email procedure. One option would be to change the headings for 65.211 and 65.212 and move the provision about discussions by email (currently 65.212(b)) to a new section.

The other option would be to combine the two sections into one section, called “action without meeting,” and then create two subsections – the first for unanimous consent and the second for the new email procedure. I have not tried to draft this second option, because the structure is already complex, and I found it difficult to combine the two sections.

The text that follows shows what changes might look like, using strike-and-score to show the changes.

**OREGON STATE BAR  
LEGISLATIVE PROPOSAL  
Part II – Legislative Language**

Please provide your legislative language below:

**Members**

**65.211 Action without meeting using unanimous written consent.** (1) Unless a corporation's articles of incorporation or bylaws specify that a members' meeting is necessary to take an action, action required or permitted by this chapter to be taken at a members' meeting may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the members entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Action taken under this section is effective when the last member signs the consent, unless the consent specifies an earlier or later effective date. If in taking an action without a meeting the corporation complies with the requirements of ORS 65.212, the requirements in this subsection that all members entitled to vote on the action must take the action and must sign a written consent describing the action do not apply.

(2) If not otherwise determined under ORS 65.207 or 65.221, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a meeting vote in any document. [1989 c.1010 §55; 2019 c.174 §40]

**65.212 Action without meeting using electronic mail or other electronic means. ~~to discuss issues or take action.~~** (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 members ~~board of directors~~ 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 member ~~director~~ provided to the corporation for receiving communications from the corporation an electronic mail announcement that states that the members ~~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 members ~~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 member ~~director~~ may record the member's ~~director's~~ vote.

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

(3) Notwithstanding subsection (1) of this section, a corporation's ~~members 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 ~~member director~~.

(4) A ~~director member~~ may change the ~~member's 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 ~~members directors who hold office~~ at the time the ~~members board of directors~~ take an action by means of electronic mail or by other electronic means is an act of the ~~members board~~, 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. [2019 c.174 §4]

(7) If not otherwise determined under ORS 65.207 or 65.221, the record date for determining members entitled to take action without a meeting under this section is the date of the electronic mail announcement sent under subsection (2) of this section.

**65.213 Use of electronic mail or other electronic means to discuss issues.** Members may use electronic mail to discuss an issue that comes before the members.

## **Directors**

**65.341 Action without meeting using unanimous written consent.** (1) Unless the articles of incorporation or bylaws specify that a board of directors' meeting is necessary to take an action, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board of directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a meeting vote in any document. [1989 c.1010 §83; 2005 c.161 §2; 2019 c.174 §61]

**65.342 Action without meeting using electronic mail or other electronic means.** (1) Unless a corporation's articles of incorporation or bylaws provide otherwise:

(a) 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. [2019 c.174 §4]

**65.343 Use of electronic mail or other electronic means to discuss issues.** The board of directors may, without complying with all of the requirements of section 65.342, use electronic mail to discuss, but not take action on, an issue that comes before the board.

## **II. Directors Can Act to Dissolve Even If Fewer Than a Quorum Remain**

The idea behind a change in SB 360 to 65.624 was that if a nonprofit corporation has so few directors that there are not enough to have a quorum at a meeting, the corporation should be able to dissolve without appointing or electing new directors simply for the purpose of dissolution. For example, the bylaws might set the number of directors at 9, and the bylaws might also require a majority of that number for a quorum. In this example 5 directors would be needed to take action. If only 4 directors remain, the directors should be able to dissolve the corporation. But if 6 or 9 directors remain, the quorum requirement must be met. As 65.624 now reads, it appears that even with 9 directors in office, 4 could dissolve the corporation by holding a meeting without a quorum. That is the provision we need to change. The changes that follow attempt to reach that result:

**65.624 Dissolution by directors, members and third persons.** (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) If the corporation does not have members entitled to vote on dissolution, the board of directors must approve the dissolution. If the number of directors then in office is less than the minimum required by statute, Articles, or bylaws, the board may nonetheless authorize dissolution

~~if a majority of directors then in office approves 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.

(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. [1989 c.1010 §131; 1991 c.231 §11; 2019 c.174 §89]

### **III. Domestication of a Foreign Nonprofit Corporation**

The new provision proposed for Chapter 65 will permit a foreign nonprofit corporation to move to Oregon and become an Oregon nonprofit corporation through domestication. The new provision also provides rules for an Oregon nonprofit corporation that moves to another state. Under current law, a foreign nonprofit would have to dissolve in the other state and start anew in Oregon, creating a new Oregon nonprofit. Without a domestication statute in place, some organizations might find it necessary to submit another application for tax-exempt status with the IRS, even though the organization already obtained that recognition while operating in another state. In addition, domestication allows an entity to keep its original formation date, which has advantages and is not true if the organization is required to form a new corporation. The expense involved in starting a new organization in Oregon may discourage charities from moving to Oregon. A domestication statute for nonprofit corporations would allow a charity to move to Oregon and continue in existence as the same charity.

For a charity leaving Oregon and moving to another state, the important restriction is to require notice to the Attorney General so that a charity cannot move charitable assets out of the state without the oversight of the Attorney General's Charitable Activities Section.

The following language is based in part on the conversion statutes in Chapter 60, applicable to business corporations. The new sections would be added to Chapter 65, and they are produced here without underlining, for ease of reading.

**65.XXX Domestication.** (1)(a) A nonprofit corporation organized under the laws of another jurisdiction may become a nonprofit corporation organized under this chapter if the domestication is authorized by the law of the foreign jurisdiction.

(b) A nonprofit corporation organized under this chapter may become a nonprofit corporation organized under the laws of another jurisdiction if the domestication is permitted by the laws of the other jurisdiction.

(c) A nonprofit corporation may perform a domestication described in paragraph (a) or (b) of this subsection by approving a plan of domestication and filing articles of domestication.

(2) A nonprofit corporation organized under this chapter may become a nonprofit corporation organized under the laws of another jurisdiction if:

(a) The laws of the other jurisdiction permit the domestication;

(b) The domesticating corporation approves a plan of domestication;

(c) Articles of domestication are filed in this state;

(d)(A) The domesticated corporation submits an application for filing to the Secretary of State for authority to transact business as set forth in ORS 65.707 unless the domesticated corporation does not intend to continue to transact business in Oregon; and

(B) the domesticated corporation meets all other requirements the laws of this state for authorization to transact business as a foreign corporation; and

(e) The corporation complies with all requirements that the laws of the other jurisdiction impose with respect to the domestication.

(3) The plan of domestication must set forth:

(a) The name of the corporation prior to domestication;

(b) The name of the corporation after domestication;

(c) A summary of the material terms and conditions of the domestication;

(d) The manner and basis of canceling or reclassifying the memberships of the corporation following its domestication into memberships, obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing; and

(e) Any desired amendments to the articles of incorporation or bylaws of the corporation following its domestication.

(4) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication; provided, that subsequent to approval of the plan by the members, the plan shall not be amended without the approval of the members to change:

(a) The amount or kind of memberships, obligations, rights to acquire memberships, cash, or other property to be received by the members under the plan;

(b) The articles of incorporation as they will be in effect immediately following the domestication; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(5) The plan of domestication may set forth other provisions relating to the domestication.

**65.XXX Action on plan of domestication.** A plan of domestication shall be approved in the manner provided in ORS 65.487 for mergers.

**65.XXX Limitations on domestication by public benefit or religious corporations.** A public benefit corporation or religious corporation organized under this chapter must give written notice to the Attorney General 30 days before the public benefit corporation or religious corporation files articles of domestication in another jurisdiction, unless the Attorney General has given the public benefit corporation or religious corporation a written waiver of this notice requirement. The notice must include the plan of domestication, a description of any restricted assets held by the corporation, and a description of any activities the corporation expects to continue in Oregon.

**65.XXX Articles and plan of domestication.** (1) After a domestication has been approved by the corporation, the corporation shall:

(a) File articles of domestication that state the name of the corporation that existed before domestication and the name of the corporation that will exist after domestication; and

(b) File a plan of domestication or, in lieu of a plan of domestication, a written declaration that:

(A) Identifies an address for an office of the domesticated corporation where the plan of domestication is on file; and

(B) States that the domesticated corporation will provide any member with a copy of the plan of domestication upon request and at no cost.

(2) The domestication takes effect at the later of the date and time determined in accordance with ORS 65.011.

The following sections will also need changes if the domestication statutes are adopted.

65.001 – add a new subsection:

(x) “Articles of domestication” means the articles of domestication described in ORS 65.xxx and corrected, amended and restated articles of domestication.

65.038(4) - add “domestication” to the last sentence:

An order issued under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, domestication or sale of assets.

65.144 - add domestication to the list of things members vote on, unless the articles or bylaws provide otherwise.

Vote on a domestication of the corporation, as provided in ORS 65.xxx;

65.354(5)(b) - add “domestication” to the list of things a committee of the board may not do.

(5) A committee the board creates under this section may not:

(a) Authorize distributions;

(b) Approve or recommend to members dissolution, merger, domestication or the sale, pledge or transfer of all or substantially all of the corporation’s assets;

65.387 - add “domestication” to the definition of corporation.

65.387 Definitions for ORS 65.387 to 65.414. As used in ORS 65.387 to 65.414:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger, domestication or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.