Oregon State Bar

Testimony before House Judiciary Committee
In support of HB 2330
On behalf of the Oregon State Bar Business Law Section

February 16, 2015

Representative Barker, members of the Committee:

My name is Kara Tatman, and I am an attorney in the business group of the law firm Perkins Coie LLP in Portland. I am here today as a member of the Oregon State Bar's Business Law Section on behalf of our 1,000 members representing small and large businesses throughout the urban and rural parts of Oregon.

HB 2330 addresses two separate issues impacting business entities in Oregon.

First, in connection with a merger, share exchange or conversion, the Oregon Business Corporation Act requires Oregon entities to file "articles" of merger, share exchange or conversion, as applicable, along with an attached "plan" of merger, share exchange or conversion.

The articles are set forth on forms provided by the Corporation Division containing the most pertinent information regarding the transaction. In the experience of the Business Law Section, including the plan is an administrative burden and does not provide a meaningful benefit to the public.

The Oregon Business Corporation Act prescribes specific information to be included in the plan. While that information is part of the underlying transaction document, the full document is typically not suitable for public filing (e.g., containing confidential information). In practice, this means entities or their counsel often create a separate plan document solely for purposes of filing with the Division. This practice adds administrative burden and expense to the merger, conversion or share exchange.

Also, because plans are not filed on a form provided by the Division, each filing requires detailed individual inspection by the Division's staff. The Division has identified that issues related to the plan are the most frequent causes of rejection for filed articles of merger, conversion or share exchange, further increasing the administrative burden and costs of those filings to the State.

The revised provisions would specify the pertinent parts of the plan to be included in the articles, including information on the entity surviving the merger, share exchange or conversion and that, in lieu of filing a plan, entities may affirmatively state in the articles that (i) the plan is on file at the office of the surviving entity and list the address of that office, and (ii) a copy of the plan will be furnished on request and without cost to any shareholder of a constituent entity. The articles would continue to require the entity to indicate whether a shareholder vote was obtained or whether a vote was not required, but would not require a detailed breakdown of voting results.

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The second issue HB 2330 addresses relates to dissenters' rights notifications.

In 2001, ORS 60.211(1)(b) was added to provide that a corporation's articles of incorporation may specify that action required or permitted by ORS Chapter 60 to be taken at a shareholders' meeting may instead be taken by less than unanimous written consent. ORS 60.211(6) was added to confirm that a shareholder who does not consent in writing to the action has the same rights to dissent and obtain payment for its shares as a shareholder who did not vote to approve an action at a meeting. However, no corresponding changes were made to the process for notifying non-consenting shareholders of their right to dissent or the procedures to follow to exercise dissenters' rights. This creates uncertainty with respect to a corporation's compliance with ORS 60.561 to 60.587.

The bill addresses this by revising the statutory provisions to specify the procedure for notifying shareholders who do not consent to an action taken by less than unanimous written consent of their rights to dissent and obtain payment for their shares. The bill also makes a clarifying amendment to ORS 60.561(2) to remove any ambiguity as to whether that subsection applies when shareholder action is taken by less than unanimous written consent. The amendment makes clear that ORS 60.561(2) applies only when corporate action creating dissenters' rights is taken without any shareholder approval, which we understand to be the original intent of the subsection.

Thank you for your time, and I'd be happy to answer any questions you might have.