

SB 359 STAFF MEASURE SUMMARY

Carrier: Sen. Fagan

Senate Committee On Judiciary

Action Date: 02/04/19

Action: Do pass.

Vote: 7-0-0-0

Yeas: 7 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski, Thatcher

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Channa Newell, Counsel

Meeting Dates: 2/4

WHAT THE MEASURE DOES:

Specifies process for correcting defective corporate actions for both private corporations and nonprofit corporations. Provides definitions. Specifies that a board of directors may ratify a defective corporate action by providing proper notice identifying the defective action, the date on which the action occurred, the nature of the defect, and a statement on the board's intention to ratify the action. Allows ratification of action that relates to election of the board through additional process. Requires the board to submit ratification to shareholders for approval. Specifies that quorum and voting requirements that applied to the board at the time of the defective action also apply in taking action to ratify. Specifies process for shareholder vote notice. Specifies process for voting on ratification of putative shares. Requires filing articles of validation with Secretary of State for corrections of defective action. Specifies content of filing. Provides authority to circuit court to determine validity of actions or corrections. Provides legal process for person to bring action for determination or modification of defective action.

ISSUES DISCUSSED:

- Discovery of defective action often occurs when undertaking document review prior to sale of corporation
- Procedural errors result in voidable transactions while illegal actions are void
- Voidable transactions may be remedies through corrective actions
- Measure does not provide process for validating illegal actions

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon has over 451,000 private corporations registered through the Oregon Secretary of State's office and had 5,000 new business filings in December, 2018. In addition, there are nearly 33,000 active nonprofit corporations operating in Oregon. In some cases, a business may be started without following the careful procedures outlined in the Oregon Revised Statutes, and at a later time, errors may come to light. Some errors may be corrected through action by the board of directors, but the statutes do not provide a clear process for correcting defective corporate actions.

Senate Bill 359 provides an extensive process for later approval or ratification of defective corporate actions.