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Law that allows incorporating sustainability into charters allows protection, visibility

By Carolyn M. Vogt

In 2007, the Oregon Legislature adopted House Bill 2826, which allows Oregon corporations to include a provision in their Articles of Incorporation “authorizing or directing the corporation to conduct the business of the corporation in a manner that is environmentally and socially responsible.” ORS Chapter 60.047(2)(e) became effective on Jan. 1, 2008.

The legislation was intended to enable the shareholders of an Oregon corporation to give management and the board of directors explicit authority or direction to consider the environmental and social effects of the business. Given the popularity of corporate sustainability programs, it may surprise some that the bill's sponsors considered an amendment to the state's corporation law to be desirable. In making business decisions, however, boards of directors and management must sometimes choose between maximizing profits or achieving environmentally and socially responsible objectives. Including this type of provision in the Articles of Incorporation should give more legal protection to corporate boards in making these business judgments, as well as increase the visibility of sustainability concerns.

Since its adoption, ORS 60.047(2)(e) has already generated a fair amount of discussion. Based on my informal survey of 25 corporate lawyers in Oregon, not many have yet added this provision to a client's Articles nor had a client request it. Some believe that because the wording of the statutory provision is not specific, it will introduce uncertainty in corporate governance. The legislative history of House Bill 2826 shows, however, that the intention was to allow a company to write its own provision relating to environmental and social responsibility. The Oregon State Bar commentary on the amendment advises companies not to use the exact words of the statute, but to write more specific guidance for the board and management.

A few lawyers may be concerned that the statute could incite shareholder activism, which might discourage companies from incorporating in Oregon. The effect of this type of provision in companies' Articles of Incorporation will be seen in the next few years, but the provision is purely optional and is most likely to be included when shareholder and management interests are aligned toward greater consideration of environmental and social goals or when a company is seeking to distinguish itself in promoting sustainable business.

If you are interested in incorporating this type of provision in the Articles of Incorporation of your company or learning more about it, consult your corporate lawyer.

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