

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE:** HB 2305 Amend ORS 60.441(3) to treat classes and series of stock alike for purposes of determining voting groups, and to allow the articles of incorporation to provide for separate voting groups of classes or series, even where they are similarly affected.

**Submitted by:** Business Law Section

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**1. Does this amend current law or program? Yes.**

Amends ORS 60.441(3) to:

- 1) Require Class Group Voting on Certain Amendments to Articles; and
- 2) Allow Articles or Board to Permit Separate Voting Groups

**2. PROBLEM PRESENTED (including level of severity):**

ORS 60.441 requires series and class voting on certain amendments to a corporation's articles of incorporation. This is meant to provide protection to a class or series of stock against amendments that are especially burdensome to a class or series.

However, ORS 60.441(3) provides that if an amendment would "affect two or more series in the same or a substantially similar way" the series vote together as a single group. In other words, if the amendment does not have a particular affect on a particular series, that series does not have a veto right over the proposed amendment. ORS 60.441(3) is mandatory with respect to stock series.

Although ORS 60.441(3) requires a single voting group for similarly affected *series* of stock, ORS 60.441 does not provide that similarly affected *classes* of stock vote together as a group. As written, ORS 60.441(3) draws an arbitrary distinction between classes and series of stock, and provides a veto right over amendments to separate classes even where the classes are similarly treated to all other classes and therefore need no statutory protection.

For example, if an Oregon company requires a preferred stock financing, the company will be required to obtain the vote of all junior series of preferred stock, as a group, and, separately, all of the classes of common stock, regardless of the articles of incorporation and non-voting nature of classes of common stock. Specifically, situations have arisen where a company seeks to add a series of preferred stock to obtain financing, but a non-voting class of common stock issued to employees as equity compensation has a veto right over the financing. Oregon corporations, by creating a non-voting class of stock meant for economic participation in the company's growth without shifting control of the company,

inadvertently create a blocking class of stock – the opposite of the intent.

The Model Business Corporation Act, which is the basis for ORS 60.441, was amended to correct the disparity. This proposal would conform Oregon's statute with the MBCA.

ORS 60.441(3), coincidentally, *mandates* series voting together as a group when similarly affected by an amendment to the articles of incorporation. This mandate could call into question whether the articles of incorporation could allow a separate vote on amendments if such vote is negotiated by a series. The Model Business Corporation Act addresses this issue by providing an exception to voting group requirement.

**3. SOLUTION:**

- Amend ORS 60.441(3) to provide that classes and series of stock affected in the "same or a substantially similar way" should be treated alike for purposes of determining relevant voting groups.
- Amend ORS 60.441(3) to allow the articles of incorporation or board of directors to provide for separate voting groups even if classes or series are similarly affected.

**4. PUBLIC POLICY IMPLICATION** of this proposed legislative change:

The proposal is consistent with the protection of holders of certain series or classes of stock in a corporation, but corrects an unattended consequence resulting from the current statute.

**5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education?**

No.

**6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

No.

**7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

Oregon corporations would be most impacted and interested in the change. We are not aware of any group or constituency that would have any material opposition to the proposal.

**8. Has this been introduced in a prior session?** No.