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# MEMORANDUM

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**To:** General Government Subcommittee

**From:** Steve Bender, Legislative Fiscal Office  
(503) 986-1836

**Date:** June 10, 2013

**Subject:** HB 3459-A – Office of Small Business Assistance  
Work Session Recommendations

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HB 3459-A establishes the Office of Small Business Administration within the Office of Secretary of State for purpose of facilitating interactions between small businesses and state agencies. The bill also establishes complaint and investigation procedures.

The measure, the original staff measure summary, and previously-released fiscal impact statement are available on the Oregon Legislative Information System (OLIS) and are attached to the memorandum.

The General Government Subcommittee held a public hearing on SB 143, a measure with essentially the same provisions as HB 3549-A, on 4/24/13.

The measure has a \$248,162 fiscal impact, and requires establishment of two full-time positions (1.50 FTE). Program costs are financed with Corporation Division fees that would otherwise be available for transfer to the General Fund. The agency requested support for funding and for the positions in Policy Option Package 151.

## **Amendment**

The Legislative Fiscal Office recommends adoption of the HB 3459-A2 amendments. These amendments add the establishment of a \$248,162 Other Funds expenditure limitation to the Secretary of State's 2013-15 biennium budget. The amendments, therefore, provide the adjustment required to the Secretary of State's budget to establish the Office of Small Business Administration. If the amendments are approved, the budget report prepared for the bill will include the establishment of the two requested positions (1.50 FTE).

**Motion #1: Move the –A2 amendments to HB 3549-A.**

**Measure as Modified**

The measure, as amended, is recommended to be moved to the full Committee on Joint Ways and Means.

**Motion #2: Move HB 3459-A to the full committee with a “do pass” recommendation, as amended.**

**Assignment of Carriers**

Full: \_\_\_\_\_

House Floor: \_\_\_\_\_

Senate Floor: \_\_\_\_\_

**A-Engrossed**  
**House Bill 3459**

Ordered by the House April 18  
Including House Amendments dated April 18

Sponsored by Representatives MCKEOWN, GOMBERG, FAGAN, SMITH, THATCHER; Representatives BARTON, GALLEGOS, GORSEK, HOLVEY, KENNEMER, REARDON, THOMPSON, UNGER, VEGA PEDERSON, WHITSETT, WILLIAMSON, Senator ROBLAN

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes Office of Small Business Assistance in Office of Secretary of State for purpose of facilitating interactions between small businesses and state agencies with regulatory authority over small businesses. Establishes complaint and investigation procedures. Requires preparation of reports for distribution to Secretary of State upon conclusion of investigations of complaints.

Continuously appropriates moneys to Office of Secretary of State to fund functions of Office of Small Business Assistance.

**A BILL FOR AN ACT**

1  
2 Relating to the Office of Small Business Assistance; creating new provisions; amending ORS 56.041;  
3 and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 5 of this 2013 Act are added to and made a part of ORS chapter**  
6 **56.**

7 **SECTION 2. As used in sections 2 to 5 of this 2013 Act:**

8 (1) "Small business" means a prospective, new or established business with 100 or fewer  
9 employees that is or will be located in Oregon.

10 (2) "State agency" means an agency of the executive department, as defined in ORS  
11 174.112.

12 **SECTION 3. (1) The Office of Small Business Assistance is established within the Office**  
13 **of Secretary of State. The Secretary of State shall employ and appoint personnel necessary**  
14 **to perform the functions and duties of the Office of Small Business Assistance.**

15 (2) The Office of Small Business Assistance shall:

16 (a) Assist state agencies with regulatory authority over small businesses to ensure that  
17 small businesses that are subject to audit, on-site inspection, compliance monitoring or  
18 compliance assistance efforts by state agencies, or that receive enforcement-related com-  
19 munications from or have contacts with state agencies with regulatory authority over small  
20 businesses, are provided with the means to comment on these interactions with state agen-  
21 cies.

22 (b) Work with state agencies for the purpose of facilitating interactions between small  
23 businesses and state agencies, including but not limited to obtaining timely responses to  
24 small business inquiries and requests, and resolving issues that arise in the administrative,  
25 regulatory and enforcement functions of state agencies with respect to small businesses.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (c) Work with small businesses and state agencies to identify and recommend efficient,  
2 responsive and nonretaliatory processes for:

3 (A) Receiving concerns or complaints from small businesses regarding interactions with  
4 state agencies;

5 (B) Participation of small businesses in general studies, conferences, inquiries or  
6 meetings that would improve the functioning of state agencies with regulatory authority  
7 over small businesses;

8 (C) Identifying causes of unnecessary delays, inconsistencies in the administrative, reg-  
9 ulatory and enforcement functions of state agencies and inefficient uses of state resources;  
10 and

11 (D) Making recommendations for resolving issues and disputes that arise in the context  
12 of interactions between state agencies and small businesses.

13 (3) All state agencies shall cooperate with and assist the Office of Small Business As-  
14 sistance in the performance of its duties and functions.

15 (4) Writings and information provided to, and communications with, the Office of Small  
16 Business Assistance under subsection (2) of this section are confidential and exempt from  
17 disclosure under ORS 192.410 to 192.505, except as necessary to prepare the report required  
18 under section 4 of this 2013 Act.

19 (5) The Secretary of State may adopt rules necessary to implement the provisions of  
20 sections 2 to 5 of this 2013 Act.

21 **SECTION 4.** (1) In addition to the duties and responsibilities described in section 3 of this  
22 2013 Act, the Office of Small Business Assistance may, except as provided in subsection (2)  
23 of this section, conduct reviews and investigations of complaints received from small busi-  
24 nesses with respect to interactions with state agencies.

25 (2) The office may not review and investigate a complaint under this section if the office  
26 determines that:

27 (a) The complainant could reasonably be expected to use, or is using, an alternative  
28 remedy or recourse for the complaint;

29 (b) The complaint relates to a matter outside the jurisdiction of the office;

30 (c) The complaint was delayed too long to justify review and investigation;

31 (d) The complainant does not have sufficient personal interest in, or is not personally  
32 aggrieved or affected by the subject matter of, the complaint;

33 (e) The complaint is trivial, frivolous, vexatious or not made in good faith;

34 (f) The resources of the office are insufficient for adequate review and investigation of  
35 the complaint;

36 (g) The review and investigation of other complaints take precedence over the review and  
37 investigation of the complaint; or

38 (h) The complaint is the subject of pending litigation, a pending contested case proceeding  
39 under ORS chapter 183 or an agency action that could result in a contested case proceeding  
40 under ORS chapter 183.

41 (3) The office shall notify a complainant as to whether the office will review and investi-  
42 gate the complaint within 30 days of receiving the complaint.

43 (4) If the office has undertaken a review and investigation of the complaint:

44 (a) Upon the complainant's request, the office shall inform the complainant of the status  
45 of the review and investigation; and

1 (b) Upon conclusion of the review and investigation, the office shall:

2 (A) Inform the complainant of the office's conclusions and recommendations; and

3 (B) Provide the complainant with a copy of the report prepared under subsection (6) of  
4 this section.

5 (5) The office may make recommendations to a state agency for resolution of a complaint  
6 made under this section and work with the agency to resolve the complaint. The office may  
7 also contact and discuss a complaint with the administrative head of any state agency, any  
8 state agency manager, the Governor or any member of the public for the purpose of obtain-  
9 ing the cooperation and assistance of a state agency with the complaint resolution process.

10 (6)(a) Upon completing the review and investigation of a complaint under this section, the  
11 office shall prepare a report containing the office's conclusions and recommendations.

12 (b) Before finalizing, and providing copies of, the report prepared under this subsection,  
13 the office shall provide the state agency that is the subject of the report with a preliminary  
14 report.

15 (c) Upon receipt of the preliminary report, the state agency shall have not more than 15  
16 days to comment on the report.

17 (d) If the state agency chooses to comment on the preliminary report, the final report  
18 shall include a section that contains the agency's comments.

19 (e) The office shall provide copies of the final report prepared under this subsection to  
20 the Secretary of State.

21 **SECTION 5.** A person who makes a complaint or who participates in a review and in-  
22 vestigation of a complaint under section 4 of this 2013 Act may not be subject to a penalty,  
23 sanction or restriction in connection with the person's employment or be denied any right,  
24 privilege or benefit because of the complaint or because of any review and investigation of  
25 the complaint.

26 **SECTION 6.** ORS 56.041 is amended to read:

27 56.041. (1) The Operating Account is established in the General Fund of the State Treasury.

28 (2) The net amount accruing to the Secretary of State from all fees, charges, interest, fines,  
29 penalties and miscellaneous revenues from all sources relating to business registry functions, and  
30 moneys received by the Secretary of State under ORS chapters 79 and 194 and ORS 80.100 to 80.130,  
31 87.246, 87.767 and 87.806 to 87.831 shall, after deduction of refunds, be paid over to the State  
32 Treasurer and deposited at least monthly in the Operating Account.

33 (3) Moneys deposited to the credit of the Operating Account are continuously appropriated to  
34 the Secretary of State for the expenses of carrying out the functions and duties of the Secretary of  
35 State relating to business registry, and the functions and duties of the Secretary of State under ORS  
36 chapters 79 and 194 and ORS 80.100 to 80.130, 87.246, 87.767 and 87.806 to 87.831 **and sections 2**  
37 **to 5 of this 2013 Act.**

38 (4) At the end of each month, the Secretary of State shall determine the number of business  
39 registry filings during the month for which the Secretary of State collected the fees described in  
40 ORS 56.140 (1) to (4). An amount equal to \$20 for each of those filings shall be deposited by the  
41 Secretary of State in the Operating Account. The Secretary of State shall then deposit all other  
42 moneys from the fees collected during the month under ORS 56.140 (1) to (4) in the General Fund.  
43 Amounts deposited to the General Fund under this subsection are available for general govern-  
44 mental expenses.

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 3459**

1 On page 1 of the printed A-engrossed bill, line 3, delete “and” and before  
2 the period insert “; limiting expenditures; and declaring an emergency”.

3 On page 3, after line 44, insert:

4 **“SECTION 7. (1) Sections 1 to 5 of this 2013 Act and the amend-**  
5 **ments to ORS 56.041 by section 6 of this 2013 Act become operative on**  
6 **January 1, 2014.**

7 **“(2) The Secretary of State may take any action before the opera-**  
8 **tive date specified in subsection (1) of this section that is necessary**  
9 **to enable the Secretary of State to exercise, on and after the operative**  
10 **date specified in subsection (1) of this section, all of the duties, func-**  
11 **tions and powers conferred on the Secretary of State by sections 2 to**  
12 **5 of this 2013 Act and the amendments to ORS 56.041 by section 6 of**  
13 **this 2013 Act.**

14 **“SECTION 8. Notwithstanding any other law limiting expenditures,**  
15 **the amount of \$248,162 is established for the biennium beginning July**  
16 **1, 2013, as the maximum limit for payment of expenses for the Office**  
17 **of Small Business Assistance from fees, moneys or other revenues,**  
18 **including Miscellaneous Receipts, but excluding lottery funds and fed-**  
19 **eral funds, collected or received by the Secretary of State.**

20 **“SECTION 9. This 2013 Act being necessary for the immediate**  
21 **preservation of the public peace, health and safety, an emergency is**  
22 **declared to exist, and this 2013 Act takes effect July 1, 2013.”.**



**REVENUE:** No revenue impact

**FISCAL:** Fiscal statement issued

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<b>Action:</b>	Do Pass as Amended, Be Printed Engrossed, and Be Referred to the Committee on Ways and Means by Prior Reference
<b>Vote:</b>	10 - 0 - 0
<b>Yeas:</b>	Barton, Fagan, Holvey, Kennemer, Matthews, Thatcher, Thompson, Weidner, Witt, Doherty
<b>Nays:</b>	0
<b>Exc.:</b>	0
<b>Prepared By:</b>	Jan Nordlund, Administrator
<b>Meeting Dates:</b>	4/8, 4/15

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**WHAT THE MEASURE DOES:** Establishes Office of Small Business Administration within the Office of Secretary of State for purpose of facilitating interactions between small businesses and state agencies. Establishes complaint and investigation procedures. Continuously appropriates moneys to Office of Secretary of State to fund functions of Office of Small Business Assistance.

**ISSUES DISCUSSED:**

- Giving a voice to small businesses
- Small business as source of economic growth and innovation
- Complex and confusing state regulations
- Limitations of Bureau of Labor and Industries in providing technical assistance

**EFFECT OF COMMITTEE AMENDMENT:** Prohibits Office of Small Business Assistance from reviewing and investigating a complaint that is the subject of an agency action that could result in a contested case proceeding under the Oregon Administrative Procedures Act.

**BACKGROUND:** The Secretary of State is a statewide elected official responsible for, among other duties, registering businesses operating in Oregon and conducting audits. In addition, the Office of the Secretary of State conducts special investigations regarding potential misuse of state resources. Its investigations may occur at state agencies, or may involve local governments or contractors receiving state or federal funds from state agencies. Citizens, businesses, and government employees may report government waste, fraud, or abuse to the Audits Division by phone, internet, or mail.

House Bill 3459-A creates the Office of Small Business Assistance within the Office of the Secretary of State with two primary functions: facilitate interactions between small businesses and state agencies, and conduct reviews and investigations of complaints received from small businesses with respect to interactions with state agencies. The measure defines a small business as a prospective, new or established business with 100 or fewer employees that is or will be located in Oregon. The measure also prohibits subjecting a person who makes a complaint or participates in an investigation to penalty, sanction, or restriction.



**FISCAL IMPACT OF PROPOSED LEGISLATION****Measure: HB 3459 - A**Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office***Only Impacts on Original or Engrossed  
Versions are Considered Official***Prepared by: Matt Stayner  
Reviewed by: Steve Bender  
Date: 4/15/13**Measure Description:**

Establishes Office of Small Business Assistance in Office of Secretary of State for purpose of facilitating interactions between small businesses and state agencies with regulatory authority over small businesses.

**Government Unit(s) Affected:**

Secretary of State

**Summary of Expenditure Impact**

	2013-15 Biennium	2015-17 Biennium
General Fund		
Lottery Funds		
Other Funds	253,936	338,581
Federal Funds		
<b>Total Funds</b>	<b>\$253,936</b>	<b>\$338,581</b>
Positions	2	2
FTE	1.50	2.00

**Summary of Revenue Impact**

	2013-15 Biennium	2015-17 Biennium
General Fund		
Lottery Funds		
Other Funds		

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

The measure establishes the Office of Small Business Assistance (OSBA) within the Office of the Secretary of State (SOS) for the purpose of facilitating communication and resolving issues and complaints related to interactions between small businesses (as defined in the bill) and executive branch state agencies. The measure also contains a provision allowing the OSBA to investigate otherwise unresolvable issues and complaints between state agencies and small businesses, in certain circumstances, allowing for agency comment on final determination.

The Secretary of State estimates that to carry out the provisions of the bill it would require the establishment of two full-time positions (1.50 FTE in 2013-15 biennium). The positions would be funded with Corporate Division fees collected by the SOS that would otherwise be available for transfer to the General Fund.

The establishment of the positions and the funding is included as a policy option package in the Governor's recommended budget.