

SB 762-1  
(LC 2990)  
5/4/15 (DRG )

**PROPOSED AMENDMENTS TO  
SENATE BILL 762**

**NOT WORK DRAFT**

1 On page 1 of the printed bill, delete lines 26 through 28.

2 On page 2, delete lines 1 through 9 and insert:

3 “(2)(a) The Secretary of State by rule shall prescribe a method for regu-  
4 larly auditing statements filed for contributions of less than \$100.

5 “(b) After conducting the audits required under paragraph (a) of this  
6 subsection, the Secretary of State shall ensure that, if a person, political  
7 committee or petition committee: ”.

8 In line 10, after “year” insert “on behalf of a candidate or to a political  
9 committee or a petition committee”.

10 In line 15, after “year” insert “on behalf of a candidate or to a political  
11 committee or a petition committee”.

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## Sen Boquist

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**From:** ALTMAN Rachele <rachele.altman@state.or.us>  
**Sent:** Friday, June 12, 2015 4:15 PM  
**To:** Sen Boquist  
**Cc:** Seiler Erin; Alderson Greg; TAYLOR Robert; Sen Rosenbaum; Sen Burdick; Sen Beyer; Sen Ferrioli; Gillespie Tayleranne; Powers Tom  
**Subject:** Your requested amendments to HB 2176 (SoS Elections Housekeeping bill)

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Senator Boquist,

Thank you again for reaching out to the Secretary of State's Office regarding your proposed amendments to HB 2176. After careful review, Secretary Atkins has determined that she does not support adding your proposed concepts to this bill. For this reason, it will not be possible to present your proposed amendments to the Senate Rules Committee as consensus amendments.

Sincerely,

Rachele Altman

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**From:** Sen Boquist [sen.brianboquist@state.or.us]  
**Sent:** Thursday, June 11, 2015 4:37 PM  
**To:** ALTMAN Rachele  
**Cc:** SEILER Erin; SEN Rosenbaum; Sen Burdick; SEN Beyer; Sen Ferrioli; GILLESPIE Tayleranne  
**Subject:** RE: Upcoming Hearing on HB 2176 (SoS Elections Housekeeping bill)

Mr. Altman:

It is my preference other than voting No to make three minor consensus amendment requests.

First, false statements in the required section need to be held accountable. Simply having a candidate or committee take someone to court for something the Sec of State allowed printed is not helpful. The fact is if a candidate states his employer is ABC Corporation in the required section, then ABC Corporation is not registered with the Corporate Divisions of the Secretary of State, your office still claims the employer is real even though not registered by law. Likewise, not registered with Revenue or Employment.. It is not clear, what authority you would need to have to actually enforce existing law, let alone the required changes.

Second, Alternate Filers need to be treated the same as the Treasurer. An option to this is to make Alternative Filers liable for only transactions they file. Orestar tells you which actually filed too.

Third, the failure of incoming political committees not to file changes with the Sec of State or County Clerk within ten days apparently cannot be enforced now. Your statement in the public hearing is correct. You hold the old people liable when in fact it is the new people who violated the law. This needs a technical fix too.

Here is my offer. If the Sec of State has recommended solutions I would like them by Monday morning before the Senate Session. Please remember we are on one hour notice in the Senate. Minority Reports must be done in Committee, and filed with Legislative Counsel. Therefore, my staff, or caucus staff, will file for our version of amendments Monday morning.

Think it would be best for all to reach a quick agreement for a consensus bill as making this a Floor fight on the Senate Floor would not be good for the State.

Sincerely,

Brian J. Boquist  
State Senator

**From:** Sen Boquist  
**Sent:** Thursday, June 11, 2015 2:51 PM  
**To:** 'ALTMAN Rachele'  
**Cc:** Sen Rosenbaum; Sen Ferrioli; Sen Beyer; Sen Burdick; Seiler Erin; 'tayloranne.gillespie@state.or.us'  
**Subject:** RE: Upcoming Hearing on HB 2176 (SoS Elections Housekeeping bill)

Ms. Altman:

Review your email. Yes, I have problems with the bill.

Section 3 & 4 allowing an opt out of a state or federal ballot makes no sense given Motor Voter.

Section 25. Still reviewing to understand your statements.

Section 27 is an expansion to the false filing, however, since the Sec of State cannot enforce existing law even with in it's own divisions, why change the law? Further, candidates can still file false information to the Secretary of State but your accept it anyway.

Section 33 adds back in the Treasurer which is good but it must add in the alternative filer too. The Sec of State knows exactly who did the filing i.e. the Treasurer or the Alternate Filer. Holding the Treasurer responsible for a check written by the Alternative Filer is just stupid, or corrupt. Again, since the Secretary of State will not presently make that determination this change is ridiculous.

Section 37 adding a signature to independent expenditures is not a fix to campaign finance. Independent expenditures above a certain level need to be required to file in Orestar and report on the schedule of everyone else. I am open to level in order not to block participation. I do not know if the number is above \$750 or maybe \$3500 in a year.

Section 39 notice of penalty question. Does this include emailing the alternative filer?

Sincerely,

Senator Boquist

**From:** ALTMAN Rachele [<mailto:rachele.altman@state.or.us>]  
**Sent:** Monday, June 08, 2015 11:46 AM  
**To:** Sen Boquist  
**Subject:** Upcoming Hearing on HB 2176 (SoS Elections Housekeeping bill)

Dear Senator Boquist,

I understand that the Senate Rules Committee will hold a hearing on the Secretary of State's technical elections housekeeping bill, HB 2176A, as early as this Thursday. A 1-pager and a section-by-section analysis for this bill are attached.

Please let me know if it would be helpful for you to meet with SOS staff regarding this bill prior to the hearing. Our Deputy Elections Director, Brenda Bayes, will testify at the hearing on HB 2176A and will be happy to answer questions at the hearing.

Kind regards,

*Rachele Altman*

Legislative Director  
Oregon Secretary of State  
[rachele.altman@state.or.us](mailto:rachele.altman@state.or.us)  
(503) 986-2259

## Sen Boquist

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**From:** ALTMAN Rachele <rachele.altman@state.or.us>  
**Sent:** Friday, June 12, 2015 3:17 PM  
**To:** Sen Boquist  
**Subject:** SB 762 Update

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Senator Boquist,

As you know, SoS has prepared amendments to SB 762 that direct the Secretary of State to prescribe, by rule, a method for regularly auditing statements filed for miscellaneous contributions of \$100 or less. These amendments were at first found in the -1 amendments delivered to you, and then we found that we needed to make an additional change to current law to achieve our shared goal of reducing the fiscal of this bill. The -3 amendments delivered to you are what we believe should be moved to reduce the fiscal of SB 762 (introduced) in a meaningful way.

I also understand that you requested additional details regarding how the audits provided for in the amendments would be conducted. The SoS Elections Division envisions implementing the required audits in the manner described below.

- **Frequency of Audits:** The Secretary of State (SoS) would perform an audit of reported "miscellaneous \$100 and under" contributions on a quarterly basis.
- **Audit Sampling Design:** During each audit, SoS would review a random sampling of 2% of aggregated miscellaneous contributions reported in ORESTAR during the last quarter. Of those aggregated miscellaneous contributions audited, SoS would review five of the individual transactions that make up the miscellaneous \$100 and under contribution entry for that day (unless there are five or less individual transactions, in which case all would be reviewed).
- **Substantive Focus of Audits:** SoS would review audited statements of contributions for completeness, sufficiency of occupational information, and address book or name matching issues. While conducting an audit, SoS would review statements based solely on information in ORESTAR and would not request supporting documentation. However, SoS would still be allowed to request relevant supporting documentation (e.g. bank statements) if a complaint were filed alleging campaign finance violations with evidence to support the allegations, or if SoS found evidence of possible violations of election law through the audits it conducted under SB 762.

Finally, I wanted to make you aware that we worked with Legislative Counsel to draft amendments regarding expenditures for legal services and the disclosure of such expenditures/in-kind contributions. However, before those amendments could be finalized, Legislative Counsel informed us that the heart of the amendments does not fit under SB 762's relating clause ("relating to disclosure of political contributions") and therefore may not be included. The Secretary of State's Office considered whether we could move forward with the few, more minor amendments remaining, and we determined that doing so would create inconsistent policies. Given these developments, we wonder if you have another vehicle with a broader relating clause that could cover provisions that govern how candidate committee and political committee funds may and may not be used to pay for legal services, ruled by Legislative Counsel as not fitting within SB

762's relating clause. Please let me know if you would like us to work on amendments related to legal services expenditures as part of another bill.

Sincerely,

*Rachele Altman*

Legislative Director  
Oregon Secretary of State  
rachele.altman@state.or.us  
(503) 986-2259



JEANNE P. ATKINS  
SECRETARY OF STATE

SECRETARY OF STATE  
136 STATE CAPITOL  
SALEM, OREGON 97310-0722

Phone 503-986-1500

JEANNE P. ATKINS  
SECRETARY OF STATE

## MEMORANDUM

DATE: May 8, 2015  
TO: Senator Brian Boquist  
FROM: Jeanne Atkins, Secretary of State  
RE: Potential election law changes related to payment for, or donation of, legal services to campaigns or candidates.

Dear Senator Boquist,

Thank you for your patience while our office examines both the technical and the policy issues involved in your effort to address perceived gaps in the reporting system under ORS Chapter 260. Your questions have helped us identify some of the areas where our statutes create confusion or inconsistency. As our office has sorted through the issues we have focused on the following:

1. Defining "contribution" to include legal services provided to a candidate or committee, whether the services were paid for or not.

We understand your goal to be to assure that reporting requirements (including timely reporting rules) apply to legal services in full measure – whether provided gratis or paid for by the committee or candidate.

In the past, the Secretary of State's office (and the Legislature) has taken the position that encouraging the pro bono provision of legal services is a sufficient policy goal to exclude some services from the definition of contributions, meaning they need not be reported. ORS 260.005(3)(a) provides that "personal services for which no payment was offered or given" are not "contributions". Unpaid legal work is therefore not a "contribution". Then, more specifically, ORS 260.007 (8) says that payment for legal work provided "solely for the purpose of ensuring compliance with the provisions of [ORS 260]" is excluded from the definition of "contribution" if the person paying for the services "is the regular employer of the individual rendering the services."

At the same time, it is clear in statute that if a campaign committee uses funds to pay for legal services for another campaign committee, that expenditure is required to be reported both as an expenditure of the

first campaign committee, and as an in-kind contribution to the second campaign committee. In addition, any expenditure of a committee for direct legal services has to be reported as an expenditure.

While this may seem contradictory, my assessment is that it represents an effort to encourage individual attorneys to provide (and campaigns and candidates to get) legal services but tries to make sure there is transparency when such legal advice is coming through third-party payment; and in addition assuring that any direct expenditure by a campaign committee has to be reported.

I am reluctant to actively support changing long-standing policy positions of this office without the opportunity to hear from stakeholders and research fully the concerns the public might have of either current law or any proposed changes. In light of the opportunity that exists if the Rules Committee were to take up such an amendment, however, I have asked staff to work with Legislative Counsel to provide you with amendment language that you can put before the Committee at your discretion. I am happy to have the chance to engage in discussion with the Rules Committee on the subject and will take the direction of the Legislature should they determine that a change in policy is warranted.

2. The scope of legal services that are appropriate for the use of campaign funds and therefore should be subject to current or future reporting requirements.

Whether or not the Legislature determines that free legal services should be excluded from the definition of contribution, it would be helpful for the Elections Division staff and the Secretary of State to have clarity in the description of those legal services that can be appropriately paid for by a campaign committee. Our preference would be for the statutes to make it clear that allowable expenditures include only those incurred either for legal advice or representation related to state election law. Moreover, the rules should clearly include work related to compliance with all state election laws, not just those related to Chapter 260. Making those changes would both make it clear what needs to be reported and but also explicitly narrow what is appropriate for campaign funds to be spent on.

3. Additional opportunities if the contribution definitions are changed.

Assuming that we get clarification of the types of legal services that are reportable, our Elections staff has also identified clarifications of reporting requirements that would not need statutory change but could be done through the usual update of the Secretary of State's Campaign Finance Manual.

- Any use of committee funds for legal services that is allowed under 260.407 (if amended in the ways described above) will be required to be reported as an expenditure of that committee. All "expenditures" by political committees are already required to be reported under existing law.
- Any payment by a political committee for legal services that is allowed under 260.407 (if amended in the ways described above) and is a "contribution" to a candidate or another political committee under ORS 260 will be required to be reported as an in-kind contribution under existing law.
- Any payment by a "person" for any of the legal services described in ORS 260.407 (if amended in the ways described above) that is a "contribution" to a candidate or a political committee under ORS 260 will be required to be reported as an in-kind contribution under existing law.



The attached memo describes the amendments that the Secretary's office is willing to endorse, as well as the already-drafted -1 amendments regarding regular audits of miscellaneous donations under \$100 submitted by filers. As I said above, we are also happy to work with you to get draft amendments prepared on the subject of "personal services for which no payment was offered or given", should you decide to go forward with that amendment.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne P. Atkins". The signature is written in dark ink and is positioned above the printed name.

Jeanne P. Atkins  
Oregon Secretary of State

## SB 762 Amendments Requested by Sen. Boquist and Prepared by SOS

May 8, 2015

### I. Amendments Reducing the Fiscal Impact of SB 762 on the SOS

The -1 amendments (copy of work draft provided) would reduce the fiscal impact of SB 762 while still requiring all contributions to be filed in ORESTAR. The -1 amendments would also ensure that if a person, political committee, or petition committee has not contributed an aggregate amount of more than \$100 in the calendar year on behalf of a candidate or to a political or petition committee, detailed information about their contribution(s) will not be made available to the public on ORESTAR. Finally, the -1 amendments direct the SOS by rule to prescribe a method for regularly auditing statements filed for contributions less than \$100.

Because these -1 amendments were much more straightforward than the amendments described on the page below, the SOS asked Legislative Counsel to prepare the -1 amendments first. We then worked to develop the concepts for the remaining amendments, which required more research and discussion.

### II. Amendments Related to Campaign Finance Reporting of Legal Services

#### a. Clarification of when campaign funds may be used to pay for legal expenses of a candidate or political committee

- Delete existing language in ORS 260.407(1)(b)(C), (2)(b)(C), and (3)(b)(C) and insert language that provides that campaign funds (for any candidate or type of political committee) may only be used to pay for legal expenses if the legal expenses are incurred either A) for legal advice about any candidate, political committee, or person's compliance or noncompliance with statutory or constitutional state election laws; or B) for legal representation in a legal proceeding brought under statutory or constitutional state election law.
- Amend ORS 260.407 to delete occurrences of the phrase "that are in excess of any amount necessary to defray expenditures" in subsections (1)(a), (1)(b), (2)(a), and (3)(a); Elections Division finds this language to be difficult to administer under the current "continuous" reporting requirements.

#### b. Clarification of which legal services must be reported in ORESTAR and how

- Amend SB 762 to require that any payment from a candidate's personal funds for either A) legal advice about any candidate, political committee, or person's compliance or noncompliance with statutory or constitutional state election laws, or B) legal representation in a legal proceeding brought under statutory or constitutional state election law, *must be reported as an in-kind contribution* to the candidate's principal campaign committee, except as provided in ORS 260.007(8).
- Amend ORS 260.007(8) to make that provision's exception to the definition of "contribution" more logical by replacing "for the purpose of ensuring compliance with the provisions of [ORS Chapter 260]" with "for the purpose of ensuring compliance with constitutional and statutory state elections law."