



Testimony of James White, Executive Director, Nonprofit Association of Oregon
HB4067-1
February 9, 2016
House Committee on Judiciary

The [Nonprofit Association of Oregon](#) (NAO) has concerns regarding HB4067-1 as currently drafted.

NAO is a registered 501(c)3 nonprofit organization representing over 1,100 Oregon nonprofit organizations and affiliate members which provide assistance to the nonprofit sector. Our members are located throughout the state and come from all areas which serve our communities, including education, health and human services, the arts, and environmental protection. NAO's mission is to strengthen the collective voice, leadership and capacity of Oregon nonprofits to enrich the lives of all Oregonians. We do this by conducting training, offering executive transition and consulting services, and supporting public policy advocacy.

NAO believes that HB4067-1, as currently drafted, is redundant with current regulations and best practices, impinges on nonprofit independence, and is unnecessary.

The Legislation is redundant with existing whistleblower regulations. Generally accepted regulations already understood by nonprofits cover the proposed purposes of the legislation.

[Sarbanes-Oxley Act 1107](#) makes it a crime to knowingly take any action harmful to a person with the intent to retaliate against that person for providing a law enforcement officer with truthful information relating to the commission or possible commission of any federal offense. The American Bar Association states that although most provisions of Sarbanes-Oxley apply only to public companies, at least two criminal provisions apply to nonprofit organizations: provisions prohibiting retaliation against whistleblowers and prohibiting the destruction, alteration or concealment of certain documents or the impediment of investigations.

The IRS Form 990 Part IV, Section B. Policies, Question 13 expressly asks: "Did the organization have a written whistleblower policy?" That question is widely credited with accelerating the adoption of whistleblower policies throughout the nonprofit community. Creating new avenues for reporting beyond regulators and law enforcement to include members of the Legislative Assembly would create a confusing system that could cause nonprofits to run afoul of the law inadvertently.

The Legislation treats charitable nonprofit employers as public entities, impinging on nonprofit independence. Oregon Revised Statutes generally regulate public, private and nonprofit sectors separately, taking into account their distinct characteristics and differences. The proposed Legislation extends current whistleblower protections which are designed to cover public employees to the employees of every 501(c)(3) regardless of any connection to

government contracts or grants. Nonprofits are not public sector entities and should not be treated as such in statute.

In a departure from current practice, HB4067-1 does not extend the same burden to create and regulate policies to other categories of nonprofits (of which there many) or to for-profit employers that do not contract with the State. If enacted, this law would impose unequal burdens on charitable nonprofit employers dedicated to the common good.

The Legislation is unnecessary. The nonprofit community is already committed to promoting ethical practices, including adoption and utilization of whistleblower policies. NAO believes there are other means by which whistleblowers in the employ of nonprofits can be protected and assured their rights. NAO works as the Oregon dissemination partner for [Independent Sector's Principles for Good Governance and Ethical Practice](#). NAO actively promotes this publication, which outlines 33 best practices for charities and foundations around ethics and accountability. Principle Four provides guidance for nonprofits related specifically to whistleblower policies.

“A charitable organization should adopt and implement policies and procedures that enable individuals to come forward with information on illegal practices or violations of organizational policies. This “whistleblower” policy should specify that the organization will not retaliate against, and will seek to protect the confidentiality of, individuals who make good-faith reports.”

In closing, we support the positions the [Independent Sector](#) and the [National Council of Nonprofits](#) have taken which supports reasonable and non-burdensome regulations and policies that already make the nonprofit community the most transparent sector of the U.S. economy. An appropriate balance must be struck which recognizes and respects the independent activities of nonprofits as public-spirited yet still private organizations.

For these reasons, NAO is concerned with HB4067-1 as currently written.