

March 6, 2017

Representative Paul Holvey, Chair
House Committee on Business and Labor
Oregon State Legislature

Re: HB 2191

Chair Holvey and Members of the Committee:

OSPIRG strongly supports the intent behind HB 2191 and we urge you to make it a priority to take action to stop the abuse of anonymous shell corporations in Oregon this Legislative Session. While we believe that the legislation needs a little technical work to ensure that it meets its objectives, we think it is critical to take action this Session to protect Oregon citizens, consumers and taxpayers from scams, criminal activity and lost revenue due to tax evasion, all of which are enabled by Oregon's current incorporation laws.

Today, Oregon's incorporation process is being abused by those who have no interest in legitimate business. This legislation is not intended to and will not have the effect of making incorporation or regulatory oversight more difficult or expensive for legitimate businesses in Oregon. Its intent is solely to provide law enforcement with the tools they need to identify and stop bad actors. We know that some business owners may have legitimate concerns about making ownership information available to the general public in certain situations, which is why this legislation makes this information available only to law enforcement.

As outlined in an accompanying fact sheet available on OLIS, Oregon's current incorporation rules have turned the state into one of the top targets in the country for the abuse of shell corporations for activities including money laundering and drug trafficking. The cases outlined in the fact sheet are some of the worst examples we know about, but since Oregon's laws make it difficult if not impossible in many situations for law enforcement to track the activities and ownership of shell corporations, it is likely there are many more examples we do not know about—and may never know about in the absence of legislative action.

While we strongly support this legislation, we do have some concerns about the current wording and we recommend pursuing some technical amendments to ensure it meets its objectives. The remainder of my testimony will outline those concerns and some suggestions for how best to address them.

As written, HB 2191 requires entities to submit a document to the Secretary of State that includes *either* (1) a statement under penalty of perjury that the corporation has filed or will file a tax return, *or* (2) a list of beneficial owners. We believe the intent of the tax return option is to

provide a simpler beneficial owner disclosure option for legitimate Oregon businesses, which is an entirely reasonable goal, but we do have two major concerns with this approach.

- First, the tax declaration option leaves open the opportunity for abuse and delay by bad actors. An individual could declare an intention to file a tax return, form the entity without disclosing its beneficial owner/s, and then use the entity to engage any number of criminal activities prior to the time when a tax return is required or simply fail to file a return altogether.
- Second, by allowing entities to submit tax returns to satisfy the beneficial ownership disclosure requirements, it effectively sends the beneficial ownership information away from the Secretary of State and instead to the Department of Revenue. Since SOS only has direct access to incorporation documents and DOR only has direct access to tax filings, it is possible that each agency will only have access to half of the necessary information to prevent abuse. It is also somewhat unclear how law enforcement would gain access to the beneficial ownership information submitted through tax returns.

For these reasons, we would suggest moving away from an approach involving the tax system. The most straightforward fix would be to require all entities to submit the list of beneficial ownership information at the time of formation and then regularly thereafter.

If legitimate Oregon businesses are concerned about the perceived burden of submitting their beneficial ownership information, the bill could be amended to include exemptions to limit the scope of companies required to disclose, or to reduce the associated paperwork. Possible options for excluding legitimate businesses from reporting requirements include making exemptions for companies with a brick and mortar presence, a minimum number of employees, and a minimum revenue; additional exemptions could be included for public companies and other low-risk entities.

Finally, we would suggest one small technical change to Section 13(2)(B). As it currently reads, it appears that entities could submit information on their U.S. citizen beneficial owners *or* their foreign owners. We would make that last word in 13(2)(B)(i) an “and” rather than an “or”, just to be clear.

Thank you for your consideration.

Jesse Ellis O'Brien
OSPIRG Policy Director