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SUMMARY

Establishes office of business ombudsman in office of Governor. Specifies duties, functions and powers of office. Authorizes business ombudsman to issue order directing action by state agency if business experiences significant hardship because of administration of laws that affect business. Requires business ombudsman to report biennially on operation of office to committee of Legislative Assembly related to state agency operations.

Abolishes Office of Small Business Assistance and transfers duties, functions and powers of Office of Small Business Assistance to business ombudsman.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to the establishment of the office of business ombudsman; creating new provisions; amending ORS 56.041 and 183.407; repealing ORS 56.200, 56.203, 56.204, 56.206 and 56.209; and prescribing an effective date.

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

SECTION 1. As used in sections 1 to 8 of this 2023 Act:

(1) **“Business” means any corporation, partnership, company, cooperative, sole proprietorship or other legal entity organized or operating for pecuniary or nonpecuniary gain.**

(2) **“Local government” has the meaning given that term in ORS 174.116.**

(3) **“Public record” has the meaning given that term in ORS 192.311.**

(4) **“Small business” means a prospective, new or established business with 100 or fewer employees that is or will be located in Oregon.**

(5) **“State agency” means an agency of the executive department,**

as defined in ORS 174.112.

SECTION 2. (1)(a) The office of the business ombudsman is established in the office of the Governor. The business ombudsman shall assist businesses that operate in this state with regulatory compliance, including education concerning business obligations under the law, and shall upon request mediate interactions with state agencies, advocating when necessary for the reasonable and good-faith interests of businesses in such interactions and working collaboratively to avoid problems and penalties in favor of achieving workable resolutions. The Governor shall select the business ombudsman and the employees of the office, who may include employees of the office of the Governor and residents of this state with knowledge of business operations and regulatory compliance.

(b) Public records that the business ombudsman prepares or receives under subsection (2) of this section are confidential and exempt from disclosure under ORS 192.311 to 192.478, except for reports required under section 4 of this 2023 Act. Communications to and from the business ombudsman are confidential and exempt from disclosure under ORS 192.311 to 192.478.

(2) The business ombudsman shall assist businesses with:

(a) Obtaining easily understandable information about state agency administrative rules, policies and procedures that affect the operations of the business;

(b) Locating and contacting individuals within state agencies who are best able to answer questions about:

(A) How a state agency's administrative rules, policies and procedures may affect the business's operations; and

(B) How the state agency might interpret and apply the state agency's administrative rules, policies and procedures in particular circumstances;

(c) Locating and completing forms, identifying required submissions

1 and payments and recognizing deadlines required to meet business
2 obligations under the law;

3 (d) Identifying third parties and other resources that can assist a
4 business with regulatory compliance; and

5 (e) Other needs the business ombudsman discovers and determines
6 would benefit from assistance from the business ombudsman.

7 (3) The business ombudsman may also:

8 (a) Expedite service to businesses in cases where ordinary proce-
9 dures do not resolve a problem;

10 (b) Collaborate with state agency personnel to resolve the most
11 complex and sensitive business problems and to identify and resolve
12 systemic problems that businesses experience with state agencies;

13 (c) Participate in and represent business interests and concerns in
14 planning meetings, reviewing instructions and formulating state
15 agency policies and procedures that would affect significant segments
16 of the state's business community;

17 (d) Compile data each year on the number and type of business
18 complaints and evaluate the actions state agencies take to resolve
19 complaints;

20 (e) Survey businesses each year to obtain an evaluation of the
21 quality of service state agencies provide; and

22 (f) Perform other functions that the business ombudsman deter-
23 mines would assist businesses in regulatory compliance.

24 (4) If a business is a small business, the business ombudsman shall
25 take particular care to:

26 (a) Assist state agencies with regulatory authority over small busi-
27 nesses in ensuring that small businesses that are subject to the state
28 agency's audit, on-site inspection, compliance monitoring or compli-
29 ance assistance efforts, or that receive enforcement-related commu-
30 nications from or have contacts with state agencies with regulatory
31 authority over small businesses, have an opportunity and means to

comment on interactions with the state agencies.

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

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

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

(B) Inviting participation from small businesses in general studies, conferences, inquiries or meetings that would improve the functioning of state agencies with regulatory authority over small businesses;

(C) Identifying causes of unnecessary delays, inconsistencies in the administrative, regulatory and enforcement functions of state agencies and inefficient uses of state resources; and

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

(d) Direct or refer a small business to an appropriate resource to answer questions relating to any aspect of starting, operating or winding up a small business.

(e) Work with small businesses and local governments for the purpose of facilitating interactions between small businesses and local governments, including but not limited to resolving issues that arise in the administrative, regulatory and enforcement functions of local governments with respect to small businesses.

(f) Work with small businesses and local governments to identify and recommend ways to improve processes and functions of local governments with respect to the interaction between local govern-

ments and small businesses, including but not limited to conducting general studies, conferences, inquiries or meetings.

(5) At the request of a business, the Governor or a designee of the Governor has the exclusive power to review actions the business ombudsman takes or proposes to take in assisting the business. The Governor or the Governor's designee may modify the business ombudsman's action or proposed action.

SECTION 3. (1) As used in this section, "significant hardship" means a circumstance in which:

(a) Adverse state agency action against a business is imminent;

(b) The state agency has failed within 90 days after identifying a compliance problem with a business to act to resolve the problem; or

(c) Another condition exists that qualifies as a significant hardship under rules the business ombudsman adopts.

(2) In addition to any other action the business ombudsman may take under section 2 of this 2023 Act, the business ombudsman may order a state agency to cease any action, take any action or refrain from taking any action with respect to a business, as allowed by law, if the business ombudsman determines that a business is undergoing or is about to undergo a significant hardship as a result of the manner in which a state agency is administering an administrative rule, policy or procedure. A business need not make a formal written request before the business ombudsman issues an order under this section.

(3)(a) The business ombudsman may issue an order under this section only as an extraordinary remedy in circumstances where the business ombudsman determines that the state agency is not following applicable administrative rules or guidance related to the state agency's policies or procedures.

(b) An order issued under this section is limited to providing relief related to the state agency's policies or procedures and may not address a business's liability or substitute for informal conference pro-

cedures or normal administrative or judicial proceedings for reviewing a state agency's order, fine, denial of a license or other authority to transact business or other state agency action.

(c) The Governor or a designee of the Governor may review any order the business ombudsman issues under this section. The Governor, the Governor's designee or the business ombudsman may modify or rescind the order and shall provide a written explanation of the reasons for the modification or rescission of an order to the state agency and the business that is the subject of the order.

(4) An order the business ombudsman issues under this section or any modification or rescission of the order by the Governor or the Governor's designee is not subject to appeal.

SECTION 4. (1) Not later than September 15 of each odd-numbered year, the business ombudsman shall report, in the manner required by ORS 192.245, to a committee of the Legislative Assembly related to state agency operations regarding the operation of the office of the business ombudsman.

(2) The report required under this section must include, for the two calendar years immediately preceding:

(a) The number of and a description of business complaints the business ombudsman received.

(b) Actions state agencies took to resolve complaints the business ombudsman received.

(c) Evaluations by businesses of the quality of service that state agencies provided.

(d) Recommendations to policymakers on how to improve administrative efficiency with respect to state agency services and operations that affect businesses in this state.

(e) Recommendations to policymakers on the effectiveness of the business ombudsman's actions in removing obstacles that interfere with or prevent businesses from complying with obligations under the

1 law.

2 **SECTION 5. (1) In performing duties under section 2 of this 2023**
3 **Act, the business ombudsman shall:**

4 (a) Notify a requester not later than 30 days after receiving a re-
5 quest for assistance from a business or a local government whether
6 the business ombudsman will work with the requester.

7 (b) Respond promptly to inquiries from the requester as to the sta-
8 tus of the business ombudsman's work and notify the requester when
9 the business ombudsman has completed work.

10 (2) In performing duties under section 2 of this 2023 Act, the busi-
11 ness ombudsman may compile statistical data or compile reports re-
12 garding requests for assistance or other communications that the
13 business ombudsman receives from businesses or local governments.

14 **SECTION 6. (1) In addition to the duties and responsibilities de-**
15 **scribed in section 2 of this 2023 Act, the business ombudsman may,**
16 **except as provided in subsection (2) of this section:**

17 (a) Conduct reviews, evaluations and investigations of complaints
18 of improper, abusive or inefficient service by employees of state
19 agencies and recommend to the director of the appropriate state
20 agency actions to respond to the complaint or correct the problem;

21 (b) Identify policies and practices of state agencies that could
22 present barriers to the equitable treatment of businesses, and recom-
23 mend alternative policies and practices to the director of the appro-
24 priate state agency; and

25 (c) Notify the director of a state agency if the business ombudsman
26 determines that the state agency is improperly administering a law.

27 (2) The business ombudsman may not investigate a complaint under
28 this section if the business ombudsman determines that:

29 (a) The complainant could reasonably be expected to use, or is us-
30 ing, an alternative remedy or recourse for the complaint;

31 (b) The complaint relates to a matter outside the business

1 **ombudsman's jurisdiction;**

2 **(c) The complainant delayed too long to justify an investigation;**

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

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

8 **(f) The resources of the business ombudsman are insufficient for**
9 **adequate review and investigation of the complaint;**

10 **(g) The review and investigation of other complaints take preced-**
11 **ence over the review and investigation of the complaint; or**

12 **(h) The complaint is the subject of pending litigation, a pending**
13 **contested case proceeding under ORS chapter 183 or an agency action**
14 **that could result in a contested case proceeding under ORS chapter**
15 **183.**

16 **(3) The business ombudsman shall notify a complainant as to**
17 **whether the business ombudsman will investigate a complaint within**
18 **30 days after receiving the complaint.**

19 **(4) If the business ombudsman conducts an investigation of a com-**
20 **plaint:**

21 **(a) At the complainant's request, the business ombudsman shall**
22 **inform the complainant of the status of the investigation; and**

23 **(b) At the conclusion of the investigation, the business ombudsman**
24 **shall:**

25 **(A) Inform the complainant of the business ombudsman's conclu-**
26 **sions and recommendations; and**

27 **(B) Provide the complainant with a copy of the report prepared**
28 **under subsection (6) of this section.**

29 **(5) The business ombudsman may make recommendations to a state**
30 **agency for resolution of a complaint made under this section and work**
31 **with the agency to resolve the complaint. The business ombudsman**

1 may also contact and discuss a complaint with the administrative head
2 of any state agency, any state agency manager, the Governor or any
3 member of the public for the purpose of obtaining the cooperation and
4 assistance of a state agency with the complaint resolution process.

5 (6)(a) Upon completing an investigation of a complaint under this
6 section, the business ombudsman shall prepare a report that sets forth
7 the business ombudsman's conclusions and recommendations.

8 (b) Before finalizing, and providing copies of, the report described
9 in paragraph (a) of this subsection, the business ombudsman shall
10 provide the state agency that is the subject of the report with a pre-
11 liminary report.

12 (c) A state agency that receives a report under paragraph (b) of this
13 subsection has not more than 15 days within which to submit com-
14 ments on the report.

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

18 (e) The business ombudsman shall provide copies of the final report
19 the business ombudsman prepared under this subsection to the Gov-
20 ernor.

21 SECTION 7. A person who makes a complaint or who participates
22 in an investigation of a complaint under section 6 of this 2023 Act may
23 not be subject to a penalty, sanction or restriction in connection with
24 the person's employment or be denied any right, privilege or benefit
25 because of the complaint or because of any review and investigation
26 of the complaint.

27 SECTION 8. The business ombudsman may adopt rules that are
28 necessary to carry out the purposes of sections 1 to 8 of this 2023 Act.

29 SECTION 9. (1) The Office of Small Business Assistance is abol-
30 ished.

31 (2) All the duties, functions and powers of the Office of Small

1 Business Assistance are imposed upon, transferred to and vested in the
2 office of the business ombudsman established under section 2 of this
3 2023 Act.

4 **SECTION 10.** (1) The Secretary of State shall:

5 (a) Deliver to the business ombudsman all records and property
6 within the jurisdiction of the Secretary of State that relate to the du-
7 ties, functions and powers transferred by section 9 of this 2023 Act; and

8 (b) Transfer to the business ombudsman those employees engaged
9 primarily in the exercise of the duties, functions and powers trans-
10 ferred by section 9 of this 2023 Act.

11 (2) The business ombudsman shall take possession of the records
12 and property, and shall take charge of the employees and employ the
13 employees in exercising the duties, functions and powers transferred
14 by section 9 of this 2023 Act, without reduction of compensation but
15 subject to change or termination of employment or compensation as
16 provided by law.

17 (3) The Governor shall resolve any dispute between the Secretary
18 of State and the business ombudsman relating to transfers of records,
19 property and employees under this section, and the Governor's deci-
20 sion is final.

21 **SECTION 11.** (1) The unexpended balances of amounts authorized
22 to be expended by the Office of Small Business Assistance for the
23 biennium beginning July 1, 2023, from revenues dedicated, contin-
24 uously appropriated, appropriated or otherwise made available for the
25 purpose of administering and enforcing the duties, functions and
26 powers transferred by section 9 of this 2023 Act are transferred to and
27 are available for expenditure by the business ombudsman for the
28 biennium beginning July 1, 2023, for the purpose of administering and
29 enforcing the duties, functions and powers transferred by section 9 of
30 this 2023 Act.

31 (2) The expenditure classifications, if any, established by Acts au-

1 **thorizing or limiting expenditures by the Office of Small Business As-**
2 **sistance remain applicable to expenditures by the business ombudsman**
3 **under this section.**

4 **SECTION 12. The transfer of duties, functions and powers to the**
5 **business ombudsman by section 9 of this 2023 Act does not affect any**
6 **action, proceeding or prosecution involving or with respect to such**
7 **duties, functions and powers begun before and pending at the time of**
8 **the transfer, except that the business ombudsman is substituted for**
9 **the Office of Small Business Assistance in the action, proceeding or**
10 **prosecution.**

11 **SECTION 13. (1) Sections 9 to 17 of this 2023 Act do not relieve a**
12 **person of a liability, duty or obligation accruing under or with respect**
13 **to the duties, functions and powers transferred by section 9 of this 2023**
14 **Act. The business ombudsman may undertake the collection or**
15 **enforcement of any such liability, duty or obligation.**

16 **(2) The rights and obligations of the Office of Small Business As-**
17 **sistance legally incurred under contracts, leases and business trans-**
18 **actions executed, entered into or begun before the operative date of**
19 **section 9 of this 2023 Act are transferred to the business ombudsman.**
20 **For the purpose of succession to these rights and obligations, the**
21 **business ombudsman is a continuation of the Office of Small Business**
22 **Assistance and not a new authority.**

23 **SECTION 14. Notwithstanding the transfer of duties, functions and**
24 **powers by section 9 of this 2023 Act, the rules of the Office of Small**
25 **Business Assistance in effect on the operative date of section 9 of this**
26 **2023 Act continue in effect until superseded or repealed by rules of the**
27 **business ombudsman. References in rules of the Office of Small Busi-**
28 **ness Assistance to the Office of Small Business Assistance or an offi-**
29 **cer or employee of the Office of Small Business Assistance are**
30 **considered to be references to the business ombudsman or an officer**
31 **or employee of the office of the business ombudsman.**

SECTION 15. Whenever, in any statutory law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Office of Small Business Assistance or an officer or employee of the Office of Small Business Assistance, the reference is considered to be a reference to the business ombudsman or an officer or employee of the office of the business ombudsman.

SECTION 16. The Governor may appoint the business ombudsman before the operative date of section 9 of this 2023 Act and may take any action before that date that is necessary to enable the business ombudsman to exercise, on and after the operative date of section 9 of this 2023 Act, the duties, functions and powers of the business ombudsman under sections 1 to 8 of this 2023 Act.

SECTION 17. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Office of Small Business Assistance” or its officers, wherever they occur in statutory law, words designating the “business ombudsman” or officers in the office of the business ombudsman.

SECTION 18. ORS 56.041 is amended to read:

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

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

(3) Moneys deposited to the credit of the Operating Account are continuously appropriated to the Secretary of State for the expenses of carrying out the functions and duties of the Secretary of State relating to business

1 registry, and the functions and duties of the Secretary of State under ORS
2 chapters 79 and 194 and ORS [56.200 to 56.209,] 80.100 to 80.130, 87.246, 87.767
3 and 87.806 to 87.831.

4 (4) At the end of each month, the Secretary of State shall determine the
5 number of business registry filings during the month for which the Secretary
6 of State collected the fees described in ORS 56.140 (1) to (4). After deducting
7 and depositing to the Operating Account the expenses of carrying out the
8 functions and duties of the Secretary of State relating to business registry,
9 and an amount necessary to maintain a reasonable reserve, the Secretary of
10 State shall deposit all other moneys from the fees collected during the month
11 under ORS 56.140 (1) to (4) in the General Fund. Amounts deposited to the
12 General Fund under this subsection are available for general governmental
13 expenses.

14 **SECTION 19.** ORS 183.407 is amended to read:

15 183.407. (1) The Small Business Rules Advisory Committee is established
16 to serve as an advisory committee for agencies adopting new administrative
17 rules and to review the effectiveness of existing administrative rules.

18 (2) The committee consists of nine members as follows:

19 (a) Two representatives of small businesses appointed by the Governor;

20 (b) Two representatives of small businesses appointed by the President
21 of the Senate;

22 (c) Two representatives of small businesses appointed by the Speaker of
23 the House;

24 (d) A representative of small businesses appointed by the [*Office of Small*
25 *Business Assistance established in ORS 56.203*] **office of the business om-**
26 **budsman established in section 2 of this 2023 Act;**

27 (e) A representative of state agencies appointed by the Director of the
28 Oregon Department of Administrative Services; and

29 (f) A member who is an expert in the rulemaking process appointed by the
30 State Archivist.

31 (3) Upon request of an agency, the committee shall serve as the advisory

committee or fiscal impact advisory committee for reviewing an agency's proposed administrative rules under ORS 183.333.

(4) Upon request of an agency, the committee may agree to complete the rules review and reporting required by ORS 183.405 in place of the agency.

(5) Members of the committee shall be appointed to serve for terms of two years, but a member serves at the pleasure of the appointing authority. The appointing authority shall appoint a person to fill any vacancy on the committee for the expired term. A member may be reappointed to the committee.

(6) The members of the committee shall elect a chairperson from among the members of the committee. In the absence of a chairperson, the member appointed by the State Archivist shall serve as acting chairperson.

(7) A majority of the members of the committee constitutes a quorum for the transaction of business.

(8) The committee shall meet upon the call of the chairperson or upon a request of a majority of the members of the committee. The committee may meet by phone or video conference with at least 24 hours' public notice.

(9) The State Archives shall provide administrative support to the committee.

(10) Members of the committee are not entitled to compensation, but may be reimbursed from funds available to the State Archives for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495.

SECTION 20. ORS 56.200, 56.203, 56.204, 56.206 and 56.209 are repealed.

SECTION 21. Sections 1 to 17 of this 2023 Act, the amendments to ORS 56.041 and 183.407 by sections 18 and 19 of this 2023 Act and the repeal of ORS 56.200, 56.203, 56.204, 56.206 and 56.209 by section 20 of this 2023 Act become operative on January 1, 2024.

SECTION 22. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

