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Chair Bynum, Vice-Chair Diehl, Vice-Chair Nguyen, and Members of the Committee,

My name is Kathy Wai, Legislative Director for Secretary Griffin-Valade. Our mission at the Secretary of State's Office (SoS) is to build trust between the people of Oregon and our state government so that public services can make a positive impact in people's lives. One of the ways we build trust is by providing services to businesses, non-profits, and small businesses in Oregon. On average, we process over 90,000 new filings each year.

The Secretary does not have a position on HB 4101. Though we agree with the policy vision of [HB 4101](#) and remain committed to a successful implementation, we do believe there is still more discussion to be had on the language of the proposed bill. HB 4101 is a reintroduction of HB 3272 (2023), which directs the SoS to collect new fields of demographic data not previously collected and share that data with organizations that are community-based, foster economic development, and engage in efforts to increase the number of businesses owned by women, minorities, and veterans. The measure also permits the SoS to collect information about the ethnicity, gender, veteran status, address, and email address for each owner and principal of a business that applies for or renews a business registration; and to share this information with the previously mentioned organizations. We appreciate some of the improvements made on HB 4101 such as shifting the mandatory requirement to provide demographic information to voluntary, adding gender, and extending the implementation date.

While we strongly agree with the intent of HB 4101, we have substantial feedback on the current bill language. As the agency that would be largely responsible for implementing this legislation, please consider the following to improve the bill.

What HB 4101 Does

- Requires the Secretary of State to collect and share with state agencies, Small Business Development Centers, and certain community-based organizations information about the ethnicity, gender, and veteran status of each owner and principal of a business that applies for or renews a business registration in this state, if the owner or principal chooses to provide the information.
- Section 1, paragraph (4)(a) uses shall language to describe the collection of the data: *The Secretary of State shall collect information about the ethnicity, gender and veteran status of each owner*

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and principal of a business that applies for or renews a business registration, if the owner or principal chooses to provide the information, together with the owner's or principal's street address and electronic mail address. The Secretary of State shall provide an accessible and easy to use method for submitting the information electronically in connection with a business registration, but may not mandate that a person provide information about an owner's or principal's ethnicity, gender or veteran status as a condition of applying for or renewing a business registration.

- Section 1, paragraphs (4)(b) and (c) use “may” language to describe the Secretary’s discretionary authority to share the data with state agencies, SBDCs, and certain types of community-based organizations.
- The bill, if enacted, has an effective date 91 days after sine die and an operative date of January 1, 2028.

Impacts to SoS

- **License directory.** A previous version of this bill introduced in the 2023 session (HB 3272) sought to amend ORS 56.185 and have SoS collect demographic data through the License Directory. Although the current bill makes no reference to ORS 56.185, it still amends ORS 56.180, which potentially could affect how SoS administers the License Directory. This bill adds language to ORS 56.180 that requires SoS to include information about local government business licensing and registration requirements in the Business Registration Information Center. Although the Business License Directory theoretically does this already, many local governments don’t update the Directory, as required by ORS 56.185 (3). If this bill is enacted, to be in compliance, would likely require an additional position to manage the License Directory and the Information Center.
- **Shareholder data.** SoS doesn’t collect ownership information when corporations register or renew—only the names and addresses of the president, the secretary, individual(s) with direct knowledge of the business operations and activities, and the registered agent. For Articles of Incorporation, SoS also collects the names and addresses of the incorporators. However, the legislation, as written, requires SoS to collect demographic information about “each owner and principal of a business that applies for or renews a business registration.” The introduced bill language is unclear if the SoS have to start collecting demographic information about each shareholder.
- **Information changes.** The bill language is likewise unclear as to whether SoS would have to collect ownership information when LLCs and partnerships update their registrations to reflect a change in ownership. The legislation instructs SoS to collect demographic data about “each owner and principal of a business that applies for or renews a business registration.” If we emphasize the subordinate clause (i.e., “that applies for or renews a business registration”), then we would not include updated registrations (which SoS refers to “information changes”) when collecting data. However, if we emphasize the independent clause (i.e., the “Secretary of State shall collect information about the ethnicity, gender and veteran status of each owner and principal of a business”), then the agency would want to collect demographic data when businesses submit Information Changes with updated ownership information.

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- **Paper & in-person filings.** While most business registrations and renewals are submitted electronically, in 2023, about 20% of business registry transactions occurred either in-person at the Public Service Building or using paper forms faxed or mailed to the Corporation Division. The current bill language does not address transactions that occur in-person. How will SoS collect demographic data from these customers?
 - Section 1, paragraph (4)(a) directs SoS to “provide an accessible and easy to use method for submitting the information electronically in connection with a business registration.” However, the previous sentence directs SoS to collect certain demographic data about “each owner and principal of a business that applies for or renews a business registration, if the owner or principal chooses to provide the information.”
 - Will SoS have sufficient capacity to collect demographic data from the 20% of its customers who register or renew by paper or at the service counter? How will SoS collect this data from its customers who opt not to register or renew electronically? Will phone and in-person wait times adversely affect the response rates from customers who do not register online?

Other Considerations

OARs needed. Unlike other statutes that refer to community-based organizations, this bill provides no such definition. SoS will need new OARs to clarify how it will exercise its discretionary authority to share the demographic data it collects. The new rules will need to define community-based organization and spell out additional criteria for organizations that seek access to confidential data.

Records retention policies & translation needs. SoS will need to develop records retention policies for the confidential demographic data voluntarily submitted by business owners and principals. Whether business owners and principals provide this information electronically or using paper forms, SoS will need to inform them how long it will be stored and to whom it will be provided. SoS will need clear policies written in plain language so that business owners and principals can make an informed decision about whether they wish to volunteer confidential information. These policies and forms will require translation into the various languages used by SoS to conduct business.

Risk mitigation and legal costs. Collecting and sharing confidential data exposes SoS to increased liability for possible misuses, data breaches, or unauthorized disclosure of the data. What if one owner or principal provides data about another owner or principal without that person’s consent? An organization denied access to the data could file a suit, thereby exposing the agency to increased legal costs.

Staffing needs. Besides the staffing time required to collect, collate, and distribute the demographic data, SoS will need additional staff to comply with the language added to ORS 56.180. Section 1, paragraph (2)(a) of the bill requires SoS to include information about local government business

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licensing and registration requirements in the Business Registration Information Center. Currently, SoS staff encourage customers to check with local governments to determine whether their business is subject to any local business licensing or registration requirements. However, the bill would require SoS to make that information available through the Business Registration Information Center. This would likely require a staff member dedicated to updating the license directory to include all business license and home occupation license requirements.

Suggested Language Change

Amend Section 1, paragraph (4)(a) to read:

The Secretary of State shall collect information about the ethnicity, gender, and veteran status of each owner ~~and~~ or principal of a business that applies for or renews a business registration, if the owner or principal chooses to provide the information, together with the owner's or principal's street address and electronic mail address.

- The bill instructs SoS to collect demographic data about “each owner **and** principal of a business that applies for or renews a business registration” [Section 1, paragraph (4)(a)]. About 20% of business filings are submitted either in-person or using mailed or faxed forms.
- Because of that **and**, the bill language is unclear as to whether SoS would have to collect ownership information from corporation shareholders who wish to volunteer the information.
- It's possible to interpret the bill language as directing SoS to collect updated demographic data when businesses submit ownership updates using the Information Change form.
- Section 1, paragraph (2)(a) of the bill requires SoS to include information about local government business licensing and registration requirements in the Business Registration Information Center. This would require additional staffing to maintain and update the license directory.

Given the reasons outlined above, we prefer the creation of a workgroup to engage with community partners, stakeholders, and jurisdictions to flesh out these areas in greater detail. We want to ensure a smooth and successful implementation of HB 4101 and uphold our mission to maintain the public's trust. We also want to be transparent with the estimated costs of this new data collection legislation. There is a fiscal impact to the SoS and a need for a total of four positions to fully implement the vision of the bill.

Thank you for taking the time to read our testimony.

Sincerely,
Kathy Wai

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