

# Enrolled House Bill 2096

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Government Ethics Commission)

CHAPTER .....

## AN ACT

Relating to payment of attorney fees in contested cases involving the Oregon Government Ethics Commission; creating new provisions; amending ORS 244.400; and prescribing an effective date.

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

**SECTION 1.** ORS 244.400 is amended to read:

244.400. (1) A person who prevails following a contested case hearing under this chapter or ORS 171.778 [shall] **may** be awarded reasonable attorney fees at the conclusion of the contested case or on appeal.

(2) Upon prevailing following a contested case hearing [or lawsuit], the person may petition the Marion County Circuit Court for the purpose of determining the award of reasonable attorney fees. The Oregon Government Ethics Commission shall be named as a respondent in the petition. The petitioner and respondent shall follow the procedure provided in ORCP 68 for the determination of reasonable attorney fees. The court [shall]:

**(a) May allow the petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.**

**(b) May withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the commission has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.**

**(c) Shall** give precedence on its docket to petitions filed under this subsection as the circumstances may require.

(3) An appellate court [shall] **may** award reasonable attorney fees to the person if the person prevails on appeal from any decision of the commission. **The appellate court may withhold all or part of the attorney fees from any allowance to a person if the court finds that the commission has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.**

(4) Attorney fees to be awarded under this section shall be only those fees incurred by the person from the time the commission notifies the person that it has entered an order to move to a contested case proceeding.

(5) Any attorney fees awarded to the person pursuant to this section shall be paid **from funds available to the commission** [by the commission from moneys appropriated or allocated to the commission from the General Fund].

**SECTION 2.** The amendments to ORS 244.400 by section 1 of this 2019 Act apply to attorney fees awarded for contested case proceedings that begin on or after the effective date of this 2019 Act.

**SECTION 3.** This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

**Passed by House April 17, 2019**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 6, 2019**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2019

**Approved:**

.....M,....., 2019

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2019

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Bev Clarno, Secretary of State