

House Bill 2659

Sponsored by Representative SMITH DB (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands duties of Oregon Government Ethics Commission to conduct investigations, make findings and impose penalties for violations of public meetings law. Authorizes any person to file complaint with commission alleging that meetings of governing body were not in compliance with public meetings law.

A BILL FOR AN ACT

1
2 Relating to public meetings; amending ORS 192.685, 244.260, 244.270, 244.290 and 244.350.

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

4 **SECTION 1.** ORS 192.685 is amended to read:

5 192.685. (1) Notwithstanding ORS 192.680, complaints of violations of [*ORS 192.660*] **any pro-**
6 **vision of ORS 192.610 to 192.690** alleged to have been committed by public officials may be made
7 to the Oregon Government Ethics Commission for review and investigation as provided by ORS
8 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

9 (2) The commission may interview witnesses, review minutes and other records and may obtain
10 and consider any other information pertaining to [*executive sessions*] **meetings** of the governing body
11 of a public body for purposes of determining whether a violation of ORS [*192.660*] **192.610 to 192.690**
12 occurred. Information related to an executive session conducted for a purpose authorized by ORS
13 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation
14 but shall be excluded from public disclosure.

15 (3) If the commission chooses not to pursue a complaint of a violation brought under subsection
16 (1) of this section at any time before conclusion of a contested case hearing, the public official
17 against whom the complaint was brought may be entitled to reimbursement of reasonable costs and
18 attorney fees by the public body to which the official's governing body has authority to make rec-
19 ommendations or for which the official's governing body has authority to make decisions.

20 **SECTION 2.** ORS 244.260 is amended to read:

21 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
22 written complaint alleging that there has been a violation of any provision of **either:**

23 (A) This chapter or of any rule adopted by the commission under this chapter. The complaint
24 shall state the person's reason for believing that a violation occurred and include any evidence re-
25 lating to the alleged violation.

26 (B) **ORS 192.610 to 192.690. The complaint shall state the particulars of meetings of a**
27 **governing body that were not in compliance with ORS 192.610 to 192.690 and shall state the**
28 **person's reason for believing that a violation occurred. The person shall include any evidence**
29 **relating to the alleged violation with the complaint.**

30 (b) If at any time the commission has reason to believe that there has been a violation of a

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 provision of this chapter or of a rule adopted by the commission under this chapter, the commission
2 may proceed under this section on its own motion as if the commission had received a complaint.

3 (2)(a) Not later than two business days after receiving a complaint under this section, the com-
4 mission shall notify the person who is the subject of the complaint.

5 (b) Before approving a motion to proceed under this section without a complaint, the commission
6 shall provide notice to the person believed to have committed the violation of the time and place
7 of the hearing at which the motion will be discussed. If the commission decides to proceed on its
8 own motion, the commission shall give notice to the person not later than two business days after
9 the motion is approved.

10 (c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of
11 this subsection. The notice must describe the nature of the alleged violation. The notice must in-
12 clude copies of all materials submitted with a complaint. If the commission will consider a motion
13 to proceed without a complaint, the notice must provide copies of all materials that the commission
14 will consider at the hearing on the motion.

15 (d) Information that the commission considers before approving a motion to proceed on its own
16 motion under this section and any correspondence regarding the motion or potential violation is
17 confidential. The executive director of the commission and the commission members and staff may
18 not make any public comment or publicly disclose any materials relating to the motion pending the
19 commission's approval to proceed. A person who intentionally violates this paragraph is subject to
20 a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation
21 of this paragraph by the executive director or a member of the commission or its staff may file a
22 petition in a court of competent jurisdiction in the county in which the petitioner resides in order
23 to enforce the civil penalty provided in this paragraph.

24 (3) After the commission receives a complaint or decides to proceed on its own motion, the
25 executive director of the commission shall undertake action in the Preliminary Review Phase to
26 determine whether there is cause to undertake an investigation. If the person who is the subject
27 of the action is a member of the Legislative Assembly, the executive director shall determine
28 whether the alleged violation involves conduct protected by Article IV, section 9, of the Oregon
29 Constitution.

30 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
31 commission decides to proceed on its own motion and ends on the date the executive director com-
32 pletes the statement of the facts determined during the phase under paragraph (d) of this subsection.
33 The Preliminary Review Phase may not exceed 30 days unless a complaint is filed under this section
34 with respect to a person who is a candidate for elective public office, the complaint is filed within
35 61 days before the date of an election at which the person is a candidate for nomination or election
36 and a delay is requested in writing by the candidate. If the candidate makes a request under this
37 paragraph, the Preliminary Review Phase must be completed not later than 30 days after the date
38 of the election.

39 (b) During the Preliminary Review Phase, the executive director of the commission may seek,
40 solicit or otherwise obtain any books, papers, records, memoranda or other additional information,
41 administer oaths and take depositions necessary to determine whether there is cause to undertake
42 an investigation or whether the alleged violation involves conduct protected by Article IV, section
43 9, of the Oregon Constitution.

44 (c) The Preliminary Review Phase is confidential. The executive director of the commission and
45 any commission members and staff may acknowledge receipt of a complaint but may not make any

1 public comment or publicly disclose any materials relating to a case during the Preliminary Review
2 Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount
3 not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by the
4 executive director or a member of the commission or its staff may file a petition in a court of com-
5 petent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty
6 provided in this paragraph.

7 (d)(A) At the end of the Preliminary Review Phase, the executive director of the commission
8 shall prepare a statement of the facts determined during the phase, including appropriate legal ci-
9 tations and relevant authorities. Before presentation to the commission, the executive director's
10 statement shall be reviewed by legal counsel to the commission.

11 (B) Following the conclusion of the Preliminary Review Phase, the executive director of the
12 commission shall attend an executive session of the commission where the executive director shall
13 present the statement of the facts and summarize the results of the Preliminary Review Phase to the
14 commission and recommend to the commission whether there is cause to undertake an investigation
15 or whether the commission should instead dismiss the complaint or rescind its motion.

16 (C) At the executive session, the commission shall consider the recommendation of the executive
17 director and make the final determination as to whether there is cause to undertake an investigation
18 or whether the commission should instead dismiss the complaint or rescind its motion.

19 (D) All case related materials and proceedings shall be open to the public after the commission
20 makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion.

21 (e) The time limit imposed in this subsection and the commission's inquiry are suspended if a
22 court has enjoined the executive director or the commission from continuing the inquiry.

23 (5)(a) If the commission determines that there is not cause to undertake an investigation or that
24 the alleged violation of this chapter involves conduct protected by Article IV, section 9, of the
25 Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and formally
26 enter the dismissal or rescission in its records. If the commission considers the recommendation of
27 the executive director in an executive session but the commission does not affirmatively vote to
28 undertake an investigation, dismiss the complaint or rescind its motion, the nonaction taken by the
29 commission shall be considered a dismissal of the complaint or a rescission of its motion. The com-
30 mission shall notify the person who is the subject of action under this section of the dismissal or
31 rescission. After dismissal or rescission, the commission may not take further action involving the
32 person unless a new and different complaint is filed or action on the commission's own motion is
33 undertaken based on different conduct.

34 (b) If the commission makes a finding of cause to undertake an investigation, the commission
35 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
36 subject of the investigation, identify the issues to be examined and confine the investigation to those
37 issues. If the commission finds reason to expand the investigation, the commission shall move to do
38 so, record in its minutes the issues to be examined before expanding the scope of its investigation
39 and formally notify the complainant, if any, and the person who is the subject of the investigation
40 of the expansion and the scope of the investigation.

41 (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to
42 undertake an investigation and ends on the date the commission dismisses the complaint, rescinds
43 its own motion, issues a settlement order, moves to commence a contested case proceeding or takes
44 other action justified by the findings. Except as provided in this subsection, the Investigatory Phase
45 may not exceed 180 days unless a delay is stipulated to by both the person who is the subject of

1 action under this section and the commission with the commission reserving a portion of the delay
 2 period to complete its actions.

3 (b) During the Investigatory Phase, the commission may seek any additional information, ad-
 4 minister oaths, take depositions and issue subpoenas to compel attendance of witnesses and the
 5 production of books, papers, records, memoranda or other information necessary to complete the
 6 investigation. If any person fails to comply with any subpoena issued under this paragraph or refuses
 7 to testify on any matters on which the person may be lawfully interrogated, the commission shall
 8 follow the procedure described in ORS 183.440 to compel compliance.

9 (c) The time limit imposed in this subsection and the commission's investigation:

10 (A) May be suspended if there is a pending criminal investigation that relates to the issues
 11 arising out of the underlying facts or conduct at issue in the matter before the commission and the
 12 commission determines that it cannot adequately complete its investigation until the pending crimi-
 13 nal investigation is complete; *[or]*

14 **(B) Are suspended if a suit is commenced under ORS 192.680 concerning the same**
 15 **meetings of a governing body that are the subject of the investigation by the commission,**
 16 **until a final adjudication of the suit has been made; or**

17 *[(B)]* (C) Are suspended if a court has enjoined the commission from continuing its investigation.

18 (d) At the end of the Investigatory Phase, the commission shall take action by order. The action
 19 may include:

20 (A) Dismissal, with or without comment;

21 (B) Continuation of the investigation for a period not to exceed 30 days for the purpose of ad-
 22 ditional fact-finding;

23 (C) Moving to a contested case proceeding;

24 (D) Entering into a negotiated settlement; or

25 (E) Taking other appropriate action if justified by the findings.

26 (e) The commission may move to a contested case proceeding if the commission determines that
 27 the information presented to the commission is sufficient to make a preliminary finding of:

28 **(A) A violation of any provision of this chapter or of any rule adopted by the commission under**
 29 **this chapter; or**

30 **(B) A violation of any provision of ORS 192.610 to 192.690.**

31 (7) A person conducting any inquiry or investigation under this section shall:

32 (a) Conduct the inquiry or investigation in an impartial and objective manner; and

33 (b) Provide to the executive director or the commission all favorable and unfavorable informa-
 34 tion the person collects.

35 (8) The commission shall report the findings of any inquiry or investigation in an impartial
 36 manner. The commission shall report both favorable and unfavorable findings and shall make the
 37 findings available to:

38 (a) The person who is the subject of the inquiry or investigation;

39 (b) The appointing authority, if any;

40 (c) The Attorney General, if the findings relate to a state public official;

41 (d) The appropriate district attorney, if the findings relate to a local public official; *[and]*

42 (e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge; **and**

43 **(f) The governing body of a public body, if the inquiry or investigation concerns an alleged**
 44 **violation of ORS 192.610 to 192.690 and the person who is the subject of the inquiry or in-**
 45 **vestigation is a member of that governing body.**

1 (9) Hearings conducted under this chapter must be held before an administrative law judge as-
 2 signed from the Office of Administrative Hearings established under ORS 183.605. The procedure
 3 shall be that for a contested case under ORS chapter 183.

4 (10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct
 5 that occurred more than four years before a complaint is filed or a motion is approved under sub-
 6 section (1) of this section.

7 (11) This section does not prevent the commission and the person alleged to have violated any
 8 provision of this chapter or any rule adopted by the commission under this chapter from stipulating
 9 to a finding of fact concerning the violation and consenting to an appropriate penalty. The com-
 10 mission shall enter an order based on the stipulation and consent.

11 (12) At any time during proceedings conducted under this section, the commission may enter
 12 into a negotiated settlement with the person who is the subject of action under this section.

13 (13) As used in this section:

14 (a) "Cause" means that there is a substantial, objective basis for believing that an offense or
 15 violation may have been committed and the person who is the subject of an inquiry may have com-
 16 mitted the offense or violation.

17 **(b) "Governing body" has the meaning given that term in ORS 192.610.**

18 [(b)] (c) "Pending" means that a prosecuting attorney is either actively investigating the factual
 19 basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument,
 20 has obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of
 21 negotiating a plea.

22 **SECTION 3.** ORS 244.270 is amended to read:

23 244.270. (1) If the Oregon Government Ethics Commission finds that an appointed public official
 24 has violated any provision of this chapter or any rule adopted under this chapter, **or has violated**
 25 **any provision of ORS 192.610 to 192.690**, the finding is prima facie evidence of unfitness where
 26 removal is authorized for cause either by law or pursuant to section 6, Article VII (Amended) of the
 27 Oregon Constitution.

28 (2) If the commission finds that a public official has violated any provision of this chapter or
 29 any rule adopted under this chapter, **or has violated any provision of ORS 192.610 to 192.690**, the
 30 commission shall notify the public body, as defined in ORS 174.109, that the public official serves.
 31 The notice shall describe the violation and any action taken by the commission. The commission
 32 shall provide the notice not later than 10 business days after the date the commission takes final
 33 action against the public official.

34 **SECTION 4.** ORS 244.290 is amended to read:

35 244.290. (1) The Oregon Government Ethics Commission shall:

36 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
 37 required to file the statements under this chapter or pursuant to a resolution adopted under ORS
 38 244.160.

39 (b) Develop a filing, coding and cross-indexing system consistent with the purposes of this
 40 chapter.

41 (c) Prepare and publish reports the commission finds are necessary.

42 (d) Accept and file any information voluntarily supplied that exceeds the requirements of this
 43 chapter.

44 (e) Make statements and other information filed with the commission available for public in-
 45 spection and copying during regular office hours, and make copying facilities available at a charge

1 not to exceed actual cost.

2 (f) Not later than February 1 of each odd-numbered year, report to the Legislative Assembly any
3 recommended changes to provisions of ORS 171.725 to 171.785 **or 192.610 to 192.690** or this chapter.

4 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
5 171.785, 171.992[, 192.660 and 192.685] **and 192.610 to 192.690** and this chapter, including rules to:

6 (a) Create a procedure under which items before the commission may be treated under a consent
7 calendar and voted on as a single item;

8 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
9 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
10 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
11 the public disclosure;

12 (c) Establish an administrative process whereby a person subpoenaed by the commission may
13 obtain a protective order;

14 (d) List criteria and establish a process for the commission to use prosecutorial discretion to
15 decide whether to proceed with an inquiry or investigation;

16 (e) Establish a procedure under which the commission shall conduct accuracy audits of a sample
17 of reports or statements filed with the commission under this chapter or ORS 171.725 to 171.785;

18 (f) Describe the application of provisions exempting items from the definition of “gift” in ORS
19 244.020;

20 (g) Specify when a continuing violation is considered a single violation or a separate and dis-
21 tinct violation for each day the violation occurs; and

22 (h) Set criteria for determining the amount of civil penalties that the commission may impose.

23 (3) The commission may adopt rules that:

24 (a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes
25 that qualify under the class exception from the definition of “potential conflict of interest” under
26 ORS 244.020;

27 (b) Require the disclosure and reporting of gifts or other compensation made to or received by
28 a public official or candidate;

29 (c) Establish criteria for cases in which information relating to notices of actual or potential
30 conflicts of interest shall, may not or may be provided to the commission under ORS 244.130; or

31 (d) Allow the commission to accept the filing of a statement containing less than all of the in-
32 formation required under ORS 244.060 and 244.070 if the public official or candidate certifies on the
33 statement that the information contained on the statement previously filed is unchanged or certifies
34 only as to any changed material.

35 (4) Not less frequently than once each calendar year, the commission shall:

36 (a) Consider adoption of rules the commission deems necessary to implement or interpret pro-
37 visions of this chapter relating to issues the commission determines are of general interest to public
38 officials or candidates or that are addressed by the commission or by commission staff on a recur-
39 ring basis; and

40 (b) Review rules previously adopted by the commission to determine whether the rules have
41 continuing applicability or whether the rules should be amended or repealed.

42 (5) The commission shall adopt by rule an electronic filing system under which statements re-
43 quired to be filed under ORS 244.050 and 244.217 must be filed, without a fee, with the commission
44 in an electronic format.

45 (6) The commission shall make available in a searchable format for review by the public using

1 the Internet:

2 (a) Statements filed under ORS 244.050 and 244.217;

3 (b) Advisory opinions issued by the commission or the executive director of the commission;

4 (c) Findings issued by the commission under ORS 244.260 in instances where the commission
 5 determines that there has been a violation of a provision of this chapter or of any rule adopted by
 6 the commission under this chapter. Nothing in this paragraph requires the commission to make
 7 publicly available materials that are otherwise exempt from public disclosure or that are required
 8 to be kept confidential by the commission; and

9 (d) Lobbyist registration statements and revisions and updates to lobbyist registration state-
 10 ments filed under ORS 171.740. The information required under this paragraph must be available in
 11 a searchable format for review by the public using the Internet not later than one calendar day after
 12 the lobbyist files the information with the commission.

13 **SECTION 5.** ORS 244.350 is amended to read:

14 244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-
 15 ceed:

16 (a) Except as provided in paragraphs (b), (c) and (d) of this subsection, \$5,000 for violation of
 17 any provision of this chapter or any resolution adopted under ORS 244.160.

18 (b) \$25,000 for violation of ORS 244.045.

19 (c) \$10,000 for willfully violating ORS 244.040.

20 (d) Two times the amount of the penalty provision for violating a nondisclosure agreement that
 21 is contained within each nondisclosure agreement entered into in violation of ORS 244.049.

22 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil
 23 penalties not to exceed \$1,000 for violation of any provision of ORS [192.660] **192.610 to 192.690.**

24 (b) A civil penalty may not be imposed under this subsection if the violation occurred as a result
 25 of the governing body of the public body acting upon the advice of the public body's counsel.

26 (3) The commission may impose civil penalties not to exceed \$250 for violation of ORS 293.708.
 27 A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that
 28 may be imposed under subsection (1) of this section.

29 (4)(a) The commission may impose civil penalties on a person who fails to file the statement
 30 required under ORS 244.050 or 244.217. In enforcing this subsection, the commission is not required
 31 to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050 or 244.217
 32 has occurred.

33 (b) Failure to file the required statement in timely fashion is prima facie evidence of a violation
 34 of ORS 244.050 or 244.217.

35 (c) The commission may impose a civil penalty of \$10 for each of the first 14 days the statement
 36 is late beyond the date set by law, or by the commission under ORS 244.050, and \$50 for each day
 37 thereafter. The maximum penalty that may be imposed under this subsection is \$5,000.

38 (5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a
 39 civil penalty under this section, the commission may issue a written letter of reprimand, explanation
 40 or education.

41 _____