

Senate Bill 61

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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**.

Authorizes Oregon Government Ethics Commission to provide written commission advisory opinions, staff advisory opinions and oral or written staff advice on application of executive session provisions of Oregon public meetings law. Grants specified safe harbor provisions to persons who rely in good faith on commission opinions or advice.

A BILL FOR AN ACT

1
2 Relating to advice offered by Oregon Government Ethics Commission; amending ORS 192.660,
3 244.280, 244.282 and 244.284.

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

5 **SECTION 1.** ORS 244.280 is amended to read:

6 244.280. (1) Upon the written request of any person, or upon its own motion, the Oregon Gov-
7 ernment Ethics Commission, under signature of the chairperson, may issue and publish written
8 commission advisory opinions on the application of **ORS 192.660 or** any provision of this chapter to
9 any proposed transaction or action or any actual or hypothetical circumstance. A commission advi-
10 sory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must
11 be approved by a majority of the members of the commission. Legal counsel to the commission shall
12 review a proposed commission advisory opinion before the opinion is considered by the commission.

13 (2) Not later than 60 days after the date the commission receives the written request for a
14 commission advisory opinion, the commission shall issue either the opinion or a written denial of the
15 request. The written denial shall explain the reasons for the denial. The commission may ask the
16 person requesting the advisory opinion to supply additional information the commission considers
17 necessary to render the opinion. The commission, by vote of a majority of the members of the com-
18 mission, may extend the 60-day deadline by one period not to exceed 60 days.

19 (3) Except as provided in this subsection, unless the commission advisory opinion is revised or
20 revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for
21 any good faith action the person takes in reliance on an advisory opinion issued under this section.
22 The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested
23 the advisory opinion if the commission determines that the person omitted or misstated material
24 facts in making the request.

25 **SECTION 2.** ORS 244.282 is amended to read:

26 244.282. (1) Upon the written request of any person, the executive director of the Oregon Gov-
27 ernment Ethics Commission may issue and publish written staff advisory opinions on the application
28 of **ORS 192.660 or** any provision of this chapter to any proposed transaction or action or any actual
29 or hypothetical circumstance.

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 (2) Not later than 30 days after the date the executive director receives the written request for
 2 a staff advisory opinion, the executive director shall issue either the opinion or a written denial of
 3 the request. The written denial shall explain the reasons for the denial. The executive director may
 4 ask the person requesting the advisory opinion to supply additional information the executive di-
 5 rector considers necessary to render the opinion. The executive director may extend the 30-day
 6 deadline by one period not to exceed 30 days. The executive director shall clearly designate an
 7 opinion issued under this section as a staff advisory opinion.

8 (3)(a) Except as provided in paragraph (b) of this subsection, unless the staff advisory opinion
 9 is revised or revoked, the commission may only issue a written letter of reprimand, explanation or
 10 education for any good faith action a person takes in reliance on a staff advisory opinion issued
 11 under this section.

12 (b) The commission may impose, for an action that is subject to a penalty and that is taken in
 13 reliance on a staff advisory opinion issued under this section, a penalty under ORS 244.350 or
 14 244.360 on the person who requested the opinion if the commission determines that the person
 15 omitted or misstated material facts in making the request.

16 (4) At each regular meeting of the commission, the executive director shall report to the com-
 17 mission on all staff advisory opinions issued since the last regular meeting of the commission. The
 18 commission on its own motion may issue a commission advisory opinion under ORS 244.280 on the
 19 same facts or circumstances that form the basis for any staff advisory opinion.

20 **SECTION 3.** ORS 244.284 is amended to read:

21 244.284. (1) Upon the written or oral request of any person, the executive director or other staff
 22 of the Oregon Government Ethics Commission may issue written or oral staff advice on the appli-
 23 cation of **ORS 192.660** or any provision of this chapter to any proposed transaction or action or any
 24 actual or hypothetical circumstance. Any written advice not designated as a staff advisory opinion
 25 under ORS 244.282 is considered staff advice issued under this section.

26 (2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider
 27 whether the action that may be subject to penalty was taken in reliance on staff advice issued under
 28 this section.

29 **SECTION 4.** ORS 192.660 is amended to read:

30 192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from
 31 holding executive session during a regular, special or emergency meeting, after the presiding officer
 32 has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

33 (2) The governing body of a public body may hold an executive session:

34 (a) To consider the employment of a public officer, employee, staff member or individual agent.

35 (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought
 36 against, a public officer, employee, staff member or individual agent who does not request an open
 37 hearing.

38 (c) To consider matters pertaining to the function of the medical staff of a public hospital li-
 39 censed pursuant to ORS 441.015 to 441.087 including, but not limited to, all clinical committees,
 40 executive, credentials, utilization review, peer review committees and all other matters relating to
 41 medical competency in the hospital.

42 (d) To conduct deliberations with persons designated by the governing body to carry on labor
 43 negotiations.

44 (e) To conduct deliberations with persons designated by the governing body to negotiate real
 45 property transactions.

- 1 (f) To consider information or records that are exempt by law from public inspection.
- 2 (g) To consider preliminary negotiations involving matters of trade or commerce in which the
3 governing body is in competition with governing bodies in other states or nations.
- 4 (h) To consult with counsel concerning the legal rights and duties of a public body with regard
5 to current litigation or litigation likely to be filed.
- 6 (i) To review and evaluate the employment-related performance of the chief executive officer of
7 any public body, a public officer, employee or staff member who does not request an open hearing.
- 8 (j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding
9 proposed acquisition, exchange or liquidation of public investments.
- 10 (k) To consider matters relating to school safety or a plan that responds to safety threats made
11 toward a school.
- 12 (L) If the governing body is a health professional regulatory board, to consider information ob-
13 tained as part of an investigation of licensee or applicant conduct.
- 14 (m) If the governing body is the State Landscape Architect Board, or an advisory committee to
15 the board, to consider information obtained as part of an investigation of registrant or applicant
16 conduct.
- 17 (n) To discuss information about review or approval of programs relating to the security of any
18 of the following:
- 19 (A) A nuclear-powered thermal power plant or nuclear installation.
- 20 (B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal
21 power plant or nuclear installation.
- 22 (C) Generation, storage or conveyance of:
- 23 (i) Electricity;
- 24 (ii) Gas in liquefied or gaseous form;
- 25 (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- 26 (iv) Petroleum products;
- 27 (v) Sewage; or
- 28 (vi) Water.
- 29 (D) Telecommunication systems, including cellular, wireless or radio systems.
- 30 (E) Data transmissions by whatever means provided.
- 31 (3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides
32 request that negotiations be conducted in executive session. Labor negotiations conducted in exec-
33 utive session are not subject to the notification requirements of ORS 192.640.
- 34 (4) Representatives of the news media shall be allowed to attend executive sessions other than
35 those held under subsection (2)(d) of this section relating to labor negotiations or executive session
36 held pursuant to ORS 332.061 (2) but the governing body may require that specified information be
37 undisclosed.
- 38 (5) When a governing body convenes an executive session under subsection (2)(h) of this section
39 relating to conferring with counsel on current litigation or litigation likely to be filed, the governing
40 body shall bar any member of the news media from attending the executive session if the member
41 of the news media is a party to the litigation or is an employee, agent or contractor of a news media
42 organization that is a party to the litigation.
- 43 (6) No executive session may be held for the purpose of taking any final action or making any
44 final decision.
- 45 (7) The exception granted by subsection (2)(a) of this section does not apply to:

- 1 (a) The filling of a vacancy in an elective office.
- 2 (b) The filling of a vacancy on any public committee, commission or other advisory group.
- 3 (c) The consideration of general employment policies.
- 4 (d) The employment of the chief executive officer, other public officers, employees and staff
- 5 members of a public body unless:
 - 6 (A) The public body has advertised the vacancy;
 - 7 (B) The public body has adopted regular hiring procedures;
 - 8 (C) In the case of an officer, the public has had the opportunity to comment on the employment
 - 9 of the officer; and
 - 10 (D) In the case of a chief executive officer, the governing body has adopted hiring standards,
 - 11 criteria and policy directives in meetings open to the public in which the public has had the op-
 - 12 portunity to comment on the standards, criteria and policy directives.
- 13 (8) A governing body may not use an executive session for purposes of evaluating a chief execu-
- 14 tive officer or other officer, employee or staff member to conduct a general evaluation of an agency
- 15 goal, objective or operation or any directive to personnel concerning agency goals, objectives, op-
- 16 erations or programs.
- 17 (9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:
 - 18 (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to
 - 19 the substance and disposition of licensee or applicant conduct investigated by a health professional
 - 20 regulatory board.
 - 21 (b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to
 - 22 the substance and disposition of registrant or applicant conduct investigated by the State Landscape
 - 23 Architect Board or an advisory committee to the board.
- 24 **(10) Any person may submit to the Oregon Government Ethics Commission:**
 - 25 **(a) A written request for the commission to issue and publish a commission advisory**
 - 26 **opinion under ORS 244.280 on the application of this section to any actual or hypothetical**
 - 27 **circumstance;**
 - 28 **(b) A written request for the executive director of the Oregon Government Ethics Com-**
 - 29 **mission to issue and publish a staff advisory opinion under ORS 244.282 on the application**
 - 30 **of this section to any actual or hypothetical circumstance; or**
 - 31 **(c) A written or oral request for the executive director or other staff of the commission**
 - 32 **to issue written or oral staff advice under ORS 244.284 on the application of this section to**
 - 33 **any actual or hypothetical circumstance.**
- 34 [(10)] (11) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not
- 35 adopt rules that establish what entities are considered representatives of the news media that are
- 36 entitled to attend executive sessions under subsection (4) of this section.
- 37