

Senate Bill 207

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Government Ethics Commission)

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 proceed on own motion to review and investigate, if commission has reason to believe that public body conducted meetings in executive session that were not in compliance with laws authorizing executive sessions.

A BILL FOR AN ACT

1
2 Relating to Oregon Government Ethics Commission authority over public meeting executive ses-
3 sions; amending ORS 192.685, 244.260 and 244.290.

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

5 **SECTION 1.** ORS 244.260 is amended to read:

6 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
7 written complaint alleging that there has been a violation of any provision of this chapter or of any
8 rule adopted by the commission under this chapter. The complaint shall state the person's reason
9 for believing that a violation occurred and include any evidence relating to the alleged violation.

10 (b) If at any time the commission has reason to believe that there has been a violation of a
11 provision of this chapter **or ORS 192.660** or [*of*] a rule adopted by the commission under this chap-
12 ter, the commission may proceed under this section on its own motion as if the commission had re-
13 ceived a complaint.

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

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

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

26 (d) Information that the commission considers before approving a motion to proceed on its own
27 motion under this section and any correspondence regarding the motion or potential violation is
28 confidential. The executive director of the commission and the commission members and staff may
29 not make any public comment or publicly disclose any materials relating to the motion pending the
30 commission's approval to proceed. A person who intentionally violates this paragraph is subject to

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 a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation
2 of this paragraph by the executive director or a member of the commission or its staff may file a
3 petition in a court of competent jurisdiction in the county in which the petitioner resides in order
4 to enforce the civil penalty provided in this paragraph.

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

11 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
12 commission decides to proceed on its own motion and ends on the date the executive director com-
13 pletes the statement of the facts determined during the phase under paragraph (d) of this subsection.
14 The Preliminary Review Phase may not exceed 60 days unless a complaint is filed under this section
15 with respect to a person who is a candidate for elective public office, the complaint is filed within
16 61 days before the date of an election at which the person is a candidate for nomination or election
17 and a delay is requested in writing by the candidate. If the candidate makes a request under this
18 paragraph, the Preliminary Review Phase must be completed not later than 60 days after the date
19 of the election.

20 (b) During the Preliminary Review Phase, the executive director of the commission may seek,
21 solicit or otherwise obtain any books, papers, records, memoranda or other additional information,
22 administer oaths and take depositions necessary to determine whether there is cause to undertake
23 an investigation or whether the alleged violation involves conduct protected by Article IV, section
24 9, of the Oregon Constitution.

25 (c) The Preliminary Review Phase is confidential. The executive director of the commission and
26 any commission members and staff may acknowledge receipt of a complaint but may not make any
27 public comment or publicly disclose any materials relating to a case during the Preliminary Review
28 Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount
29 not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by the
30 executive director or a member of the commission or its staff may file a petition in a court of com-
31 petent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty
32 provided in this paragraph.

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

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

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

45 (D) All case related materials and proceedings shall be open to the public after the commission

1 makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion.

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

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

15 (b) If the commission makes a finding of cause to undertake an investigation, the commission
16 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
17 subject of the investigation, identify the issues to be examined and confine the investigation to those
18 issues. If the commission finds reason to expand the investigation, the commission shall move to do
19 so, record in its minutes the issues to be examined before expanding the scope of its investigation
20 and formally notify the complainant, if any, and the person who is the subject of the investigation
21 of the expansion and the scope of the investigation.

22 (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to
23 undertake an investigation and ends on the date the commission dismisses the complaint, rescinds
24 its own motion, issues a settlement order, moves to commence a contested case proceeding or takes
25 other action justified by the findings. Except as provided in this subsection, the Investigatory Phase
26 may not exceed 180 days unless a delay is stipulated to by both the person who is the subject of
27 action under this section and the commission with the commission reserving a portion of the delay
28 period to complete its actions.

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

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

36 (A) May be suspended if there is a pending criminal investigation that relates to the issues
37 arising out of the underlying facts or conduct at issue in the matter before the commission and the
38 commission determines that it cannot adequately complete its investigation until the pending crimi-
39 nal investigation is complete; or

40 (B) Are suspended if a court has enjoined the commission from continuing its investigation.

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

43 (A) Dismissal, with or without comment;

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

1 (C) Moving to a contested case proceeding;

2 (D) Entering into a negotiated settlement; or

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

4 (e) The commission may move to a contested case proceeding if the commission determines that
5 the information presented to the commission is sufficient to make a preliminary finding of a violation
6 of any provision of this chapter **or ORS 192.660** or [of] any rule adopted by the commission under
7 this chapter.

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

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

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

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

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

16 (b) The appointing authority, if any;

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

18 (d) The appropriate district attorney, if the findings relate to a local public official; and

19 (e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge.

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

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

26 (11) This section does not prevent the commission and the person alleged to have violated any
27 provision of this chapter **or ORS 192.660** or any rule adopted by the commission under this chapter
28 from stipulating to a finding of fact concerning the violation and consenting to an appropriate pen-
29 alty. The commission shall enter an order based on the stipulation and consent.

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

32 (13) As used in this section:

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

36 (b) "Pending" means that a prosecuting attorney is either actively investigating the factual basis
37 of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has
38 obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of ne-
39 gotiating a plea.

40 **SECTION 2.** ORS 192.685 is amended to read:

41 192.685. (1)(a) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to
42 have been committed by public officials may be made to the Oregon Government Ethics Commission
43 for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties
44 as provided by ORS 244.350.

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

1 **of ORS 192.660, the commission may proceed under this section and as provided by ORS**
2 **244.260 on its own motion as if the commission had received a complaint.**

3 (2) The commission may interview witnesses, review minutes and other records and may obtain
4 and consider any other information pertaining to executive sessions of the governing body of a
5 public body for purposes of determining whether a violation of ORS 192.660 occurred. Information
6 related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made
7 available to the Oregon Government Ethics Commission for its investigation but shall be excluded
8 from public disclosure.

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

14 **SECTION 3.** ORS 244.290 is amended to read:

15 244.290. (1) The Oregon Government Ethics Commission shall:

16 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
17 required to file the statements under this chapter or pursuant to a resolution adopted under ORS
18 244.160.

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

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

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

24 (e) Make statements and other information filed with the commission available for public in-
25 spection and copying during regular office hours, and make copying facilities available at a charge
26 not to exceed actual cost.

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

29 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
30 171.785, 171.992, 192.660 and 192.685 and this chapter, including rules to:

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

33 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
34 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
35 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
36 the public disclosure;

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

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

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

43 (f) Describe the application of provisions exempting items from the definition of "gift" in ORS
44 244.020;

45 (g) Specify when a continuing violation is considered a single violation or a separate and dis-

1 tinct violation for each day the violation occurs; and

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

3 (3) The commission may adopt rules that:

4 (a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes
5 that qualify under the class exception from the definition of "potential conflict of interest" under
6 ORS 244.020;

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

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

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

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

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

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

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

25 (6) The commission shall make available in a searchable format for review by the public using
26 the Internet:

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

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

29 (c) Findings issued by the commission under ORS 244.260 in instances where the commission
30 determines that there has been a violation of a provision of this chapter **or ORS 192.660** or [of] any
31 rule adopted by the commission under this chapter. Nothing in this paragraph requires the com-
32 mission to make publicly available materials that are otherwise exempt from public disclosure or
33 that are required to be kept confidential by the commission; and

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

38