

House Bill 2595

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of Oregon Law 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**.

Directs Oregon Government Standards and Practices Commission or court to consider public interest and other penalties that may be imposed on public official before imposing penalty for violation of government ethics laws.

Directs commission to consider adoption of rules on issues of general interest to public officials or that are addressed by commission on recurring basis.

Authorizes state agencies and statewide associations of public bodies to adopt government ethics rules or policies consistent with state law. Allows commission to approve or reject rules and policies. Prohibits commission or court from imposing penalty on public official if official acted in compliance with rule or policy approved by commission.

Sets 60-day deadline for commission to address requests for commission advisory opinions. Allows one 60-day extension. Specifies that commission or court may not impose penalty on person for good faith action taken in reliance on commission advisory opinion.

Sets 30-day deadline for executive director of commission to address requests for staff advisory opinions. Allows one 30-day extension. Specifies that before imposing penalty on person, commission or court must consider whether action subject to penalty was taken in reliance on staff advisory opinion.

Authorizes staff of commission to issue written or oral staff advice. Specifies that before imposing penalty on person, commission or court may consider whether action subject to penalty was taken in reliance on staff advice.

Increases amount of civil penalties that may be imposed for failure of person to file statement of economic interest. Increases maximum amount of civil penalty for violation of government ethics law from \$1,000 to \$5,000.

Allows commission to issue written reprimand in lieu of imposing civil penalty for certain violations.

Consolidates provisions specifying that requirements and penalties under government ethics law apply in addition to requirements and penalties applicable under other laws.

Directs commission to notify public body that public official serves if commission determines public official violated provision of government ethics law.

Specifies that violations of conflict of interest requirements applicable to members of Oregon Investment Council are subject to investigation and sanction by commission.

Revises definition of "public servant" in criminal laws describing offenses against state and public justice to include public officials subject to government ethics law.

Specifies that criminal penalties for false swearing apply to certified statements of economic interest.

Allows person subject to commission action to request transfer of action to Marion County Circuit Court in lieu of contested case proceeding. Allows commission to transfer action to court or proceed with contested case under condition that decision of administrative law judge is final order in contested case.

Appropriates moneys from General Fund to commission for biennium beginning July 1, 2007. Appropriates moneys for subsequent biennia. Specifies method for determining amount of subsequent appropriations.

Specifies that official action taken by public official who is disqualified by law from taking action is valid if disqualification arises from failure to disclose potential conflict of interest, public body reaffirms action or action of official consists solely of voting and vote was unnecessary to reach decision or was required by law.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

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Relating to government ethics; creating new provisions; amending ORS 162.005, 171.745, 171.750, 244.020, 244.050, 244.100, 244.110, 244.130, 244.195, 244.250, 244.260, 244.270, 244.280, 244.290, 244.310, 244.350, 244.360, 244.370, 244.380, 244.390, 244.400 and 293.708; repealing ORS 244.030 and 244.080; appropriating money; and declaring an emergency.

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

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3 **COMMISSION STRUCTURE**

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5 **SECTION 1.** ORS 244.250 is amended to read:

6 244.250. (1) The Oregon Government Standards and Practices Commission is established, con-
7 sisting of seven members. **The appointment of a member of the commission is subject to con-**
8 **firmation by the Senate in the manner provided in ORS 171.562 and 171.565. Members shall**
9 **be** appointed in the following manner [*to be confirmed by the Senate*]:

10 (a) [*Four members appointed by*] The Governor **shall appoint four members** from among per-
11 sons recommended, one each by the leadership of the Democratic and Republican parties in each
12 house of the Legislative Assembly. If a person recommended by the leadership of the Democratic
13 or Republican party is not approved by the Governor, **the leadership shall recommend** another
14 person [*shall be recommended*].

15 (b) [*Three members appointed by*] The Governor **shall appoint three members** without leader-
16 ship recommendation[.]. No more than two [*of whom shall be from*] **members appointed under this**
17 **paragraph may be members of** the same major political party.

18 (2) [*No*] **A** person who holds any public office listed in ORS 244.050 (1) except as a member of
19 the commission [*shall*] **may not** be appointed to the commission. No more than four members
20 [*shall*] **may** be members of the same political party.

21 (3) The term of office **of a member** is four years. [*No*] **A** member [*shall be*] **is not** eligible to
22 be appointed to more than one full term but may serve out an unexpired term. [*However, those*
23 *members first appointed to the commission serving less than a three-year term are eligible for a second*
24 *appointment for a full term.*] Vacancies shall be filled by the appointing authority for the unexpired
25 term.

26 (4) The commission shall elect a chairperson and vice chairperson for such terms and duties as
27 the commission may require.

28 (5) A quorum consists of four members but [*no*] **a** final decision may **not** be made without an
29 affirmative vote of [*the*] **a** majority of the members appointed to the commission.

30 (6) Members shall be entitled to compensation and expenses as provided in ORS 292.495.

31 (7) The commission may retain or appoint qualified legal counsel who [*shall*] **must** be a member
32 of the Oregon State Bar and who [*shall be*] **is** responsible to the commission. The appointment of
33 legal counsel under this subsection [*shall*] **may** be made only when the commission finds it is inap-
34 propriate and contrary to the public interest for the office of the Attorney General to represent
35 concurrently more than one public official or agency in any matter before the commission because
36 [*such*] **the** representation:

37 (a) Would create or tend to create a conflict of interest; and

38 (b) Is not subject to ORS 180.230 or 180.235.

39 (8) The Attorney General [*shall*] **may** not represent before the commission any state public of-
40 ficial who is the subject of any complaint or action of the commission at the commission's own in-
41 stigation.

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43 **CONSIDERATION OF OTHER SANCTIONS**

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45 **SECTION 2.** ORS 244.390 is amended to read:

1 244.390. (1) *[The penalties and sanctions imposed by this chapter are]* **A penalty or sanction**
 2 **imposed, or a written reprimand issued, by the Oregon Government Standards and Practices**
 3 **Commission or a court under this chapter is** in addition to and not in lieu of any other penalty
 4 or sanction *[prescribed or authorized by law which applies to the conduct of public officials]* **that**
 5 **may be imposed according to law.**

6 (2) **Before making a finding that there is cause to undertake an investigation under ORS**
 7 **244.260 and before imposing a civil penalty under ORS 244.350 or 244.360, the commission or**
 8 **a court shall consider the public interest and any other penalty or sanction that has been**
 9 **or may be imposed on the public official as a result of the same conduct that is the subject**
 10 **of action by the commission or court under ORS 244.260.**

11 (3) **Nothing in this chapter is intended to affect:**

12 (a) **Any statute requiring disclosure of economic interest by any public official or candi-**
 13 **date for public office.**

14 (b) **Any statute prohibiting or authorizing specific conduct on the part of any public of-**
 15 **ficial or candidate for public office.**

16
 17 **RULEMAKING**
 18

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

20 244.290. (1) The Oregon Government Standards and Practices Commission shall:

21 [(1)] (a) Prescribe forms for statements required by this chapter and provide the forms to per-
 22 sons required to file the statements under this chapter or **pursuant to a** resolution adopted *[pur-*
 23 *suant thereto]* **under ORS 244.160.**

24 [(2)] (b) Prepare, publish and provide a manual setting forth recommended uniform methods of
 25 reporting for use by persons filing statements under this chapter or **pursuant to a** resolution
 26 adopted *[pursuant thereto]* **under ORS 244.160.**

27 [(3)] (c) Develop a filing, coding and cross-indexing system consistent with the purposes of this
 28 chapter.

29 [(4)] (d) Prepare and publish *[such]* reports *[as]* the commission finds **are** necessary.

30 (e) **Make advisory opinions issued by the commission or the executive director of the**
 31 **commission available to the public at no charge on the Internet.**

32 [(5)] (2) **The commission shall** adopt rules necessary to carry out its duties under ORS 171.725
 33 to 171.785 and 171.992 and this chapter, including rules to:

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

36 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
 37 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
 38 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
 39 the public disclosure;

40 (c) Establish an administrative process whereby a person subpoenaed by the commission may
 41 obtain a protective order; *[and]*

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

44 (e) **Establish a procedure under which the commission shall conduct accuracy audits of**
 45 **a sample of reports or statements filed with the commission under this chapter or ORS**

1 171.725 to 171.785;

2 (f) Specify when a continuing violation is considered a single violation or a separate and
 3 distinct violation for each day the violation occurs; and

4 (g) Set criteria for determining the amount of civil penalties that the commission may
 5 impose.

6 (3) The commission may adopt rules that:

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

10 (b) Require the disclosure and reporting of gifts or other compensation made to or re-
 11 ceived by a public official or candidate for public office;

12 (c) Establish criteria for cases in which information relating to notices of actual or po-
 13 tential conflicts of interest shall, may not or may be provided to the commission under ORS
 14 244.130; or

15 (d) Allow the commission to accept the filing of a statement containing less than all of
 16 the information required under ORS 244.060 and 244.070 if the public official or candidate for
 17 public office certifies on the statement that the information contained on the statement
 18 previously filed is unchanged or certifies only as to any changed material.

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

20 (a) Consider adoption of rules the commission deems necessary to implement or interpret
 21 provisions of this chapter relating to issues the commission determines are of general in-
 22 terest to public officials or candidates for public office or that are addressed by the com-
 23 mission or by commission staff on a recurring basis; and

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

26 **SECTION 4.** Section 5 of this 2007 Act is added to and made a part of ORS chapter 244.

27 **SECTION 5.** (1) For the purpose of protecting against violations of the provisions of this
 28 chapter, a state agency, as defined in ORS 183.750, or a statewide association of public bodies,
 29 as defined in ORS 174.109, may adopt rules or policies interpreting the provisions of this
 30 chapter. The rules or policies must be consistent with the provisions of this chapter. A state
 31 agency or a statewide association of public bodies may submit rules or policies adopted under
 32 this subsection to the Oregon Government Standards and Practices Commission for review.

33 (2) Upon receiving rules or policies submitted under subsection (1) of this section, the
 34 commission shall review the rules and policies to determine whether the rules and policies
 35 are consistent with the provisions of this chapter. The commission, by a vote of a majority
 36 of the members of the commission, shall approve or reject the rules or policies. The com-
 37 mission shall notify the state agency or statewide association of public bodies in writing of
 38 the commission’s approval or rejection. A written notice of rejection shall explain the rea-
 39 sons for the rejection.

40 (3) Unless the applicable rule or policy is amended or repealed by the state agency or the
 41 statewide association of public bodies, the commission or a court may not impose a penalty
 42 under ORS 244.350 or 244.360 on a public official for any good faith action the official takes
 43 in compliance with a rule or policy that was adopted by the state agency that the official
 44 serves, or by a statewide association of which the public body that the official serves is a
 45 member, and approved by the commission under subsection (2) of this section.

SECTION 6. ORS 244.100 is amended to read:

244.100. *[(1) The Oregon Government Standards and Practices Commission by rule may require the disclosure and reporting of gifts or other compensation made to or received by a public official or candidate for elective office.]*

[(2) The commission by rule may exempt from the gift limitation contained in ORS 244.040, any gift of food or beverage but may require that when gifts of food or beverage exceed a dollar amount fixed by the commission, the source thereof shall be disclosed on a form prescribed by the commission.]

[(3)] In addition to any disclosures or reports required under *[subsections (1) and (2) of this section]* **this chapter or rules adopted under ORS 244.290**, any person or organization that provides a public official with food, lodging or travel expenses exceeding *[\$50]* **\$100**, as described in ORS 244.060 (6), shall notify the public official in writing of the amount of the expense. The notice shall be sent to the public official within 10 days from the date *[such]* **the** expenses are incurred.

SECTION 7. ORS 244.110 is amended to read:

244.110. (1) *[Any]* **Each** statement of economic interest required to be filed *[by]* **under** ORS 244.050, 244.060, 244.070, *[244.080,]* 244.090 or 244.100, **or by rule under ORS 244.290**, shall **be signed and certified as true by the person required to file it and shall** contain *[or be verified by]* a written declaration that *[it]* **the statement** is made under the penalties of false swearing. *[Such declaration shall be in lieu of any oath otherwise required.]*

(2) *[No person shall willfully make and subscribe any return statement or other document which contains or is verified by a written declaration that it is made under penalties for false swearing, which the person does not believe to be true and correct to every matter]* **A person may not sign and certify a statement of economic interest under subsection (1) of this section if the person knows that the statement contains information that is false.**

(3) Violation of subsection (2) of this section is punishable as false swearing under ORS 162.075.

SECTION 8. ORS 244.020 is amended to read:

244.020. As used in this chapter, unless the context requires otherwise:

(1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (14) of this section.

(2) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) “Business with which the person is associated” means:

(a) Any private business or closely held corporation of which the person or the person’s relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person’s relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person’s relative owns or has

1 owned \$100,000 or more in stock or another form of equity interest, stock options or debt instru-
2 ments at any point in the preceding calendar year;

3 (c) Any publicly held corporation of which the person or the person's relative is a director or
4 officer; or

5 (d) For public officials required to file a statement of economic interest under ORS 244.050, any
6 business from which 50 percent or more of the total annual income of the person and members of
7 the person's household is derived during the current calendar year.

8 (4) "Commission" means the Oregon Government Standards and Practices Commission.

9 (5) "Development commission" means any entity which has the authority to purchase, develop,
10 improve or lease land or the authority to operate or direct the use of land. This authority must be
11 more than ministerial.

12 (6) "Expenditure" has the meaning given that term in ORS 260.005.

13 (7) "Gift" means something of economic value given to a public official or the public official's
14 relative without valuable consideration of equivalent value, including the full or partial forgiveness
15 of indebtedness, which is not extended to others who are not public officials or the relatives of
16 public officials on the same terms and conditions; and something of economic value given to a public
17 official or the public official's relative for valuable consideration less than that required from others
18 who are not public officials. However, "gift" does not mean:

19 (a) Campaign contributions, as described in ORS chapter 260.

20 (b) Gifts from family members.

21 (c) The giving or receiving of food, lodging and travel when participating in an event which
22 bears a relationship to the public official's office and when appearing in an official capacity, subject
23 to the reporting requirement of ORS 244.060 (6).

24 (d) The giving or receiving of food or beverage if the food or beverage is consumed by the public
25 official or the public official's relatives in the presence of the purchaser or provider thereof.

26 (e) The giving or receiving of entertainment if the entertainment is experienced by the public
27 official or the public official's relatives in the presence of the purchaser or provider thereof and the
28 value of the entertainment does not exceed \$100 per person on a single occasion and is not greater
29 than \$250 in any one calendar year.

30 (8) "Honoraria" means a payment or something of economic value given to a public official in
31 exchange for services upon which custom or propriety prevents the setting of a price. Services in-
32 clude, but are not limited to, speeches or other services rendered in connection with an event at
33 which the public official appears in an official capacity.

34 (9) "Income" means income of any nature derived from any source, including, but not limited to,
35 any salary, wage, advance, payment, dividend, interest, rent, honoraria, return of capital, forgiveness
36 of indebtedness, or anything of economic value.

37 (10) "Legislative or administrative interest" means an economic interest, distinct from that of
38 the general public, in one or more bills, resolutions, regulations, proposals or other matters subject
39 to the action or vote of a person acting in the capacity of a public official.

40 (11) "Legislative official" means any member or member-elect of the Legislative Assembly, any
41 member of an agency, board or committee that is part of the legislative branch and any staff person,
42 assistant or employee thereof.

43 (12) "Member of household" means any relative who resides with the public official.

44 (13) "Planning commission" means a county planning commission created under ORS chapter 215
45 or a city planning commission created under ORS chapter 227.

1 (14) “Potential conflict of interest” means any action or any decision or recommendation by a
 2 person acting in a capacity as a public official, the effect of which could be to the private pecuniary
 3 benefit or detriment of the person or the person’s relative, or a business with which the person or
 4 the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the fol-
 5 lowing:

6 (a) An interest or membership in a particular business, industry, occupation or other class re-
 7 quired by law as a prerequisite to the holding by the person of the office or position.

8 (b) Any action in the person’s official capacity which would affect to the same degree a class
 9 consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or
 10 other group including one of which or in which the person, or the person’s relative or business with
 11 which the person or the person’s relative is associated, is a member or is engaged. [*The commission*
 12 *may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes*
 13 *that qualify under this exception.*]

14 (c) Membership in or membership on the board of directors of a nonprofit corporation that is
 15 tax-exempt under section 501(c) of the Internal Revenue Code.

16 (15) “Public official” means any person who, when an alleged violation of this chapter occurs,
 17 is serving the State of Oregon or any of its political subdivisions or any other public body of the
 18 state as an officer, employee, agent or otherwise, and irrespective of whether the person is com-
 19 pensated for such services.

20 (16) “Relative” means the spouse of the public official, any children of the public official or of
 21 the public official’s spouse, and brothers, sisters or parents of the public official or of the public
 22 official’s spouse.

23 (17) “Statement of economic interest” means a statement as described by ORS 244.060 to 244.080.

24 (18) “Statewide official” means the Secretary of State or Secretary of State-elect, State Treas-
 25 urer or State Treasurer-elect, Superintendent of Public Instruction or Superintendent-elect of Public
 26 Instruction, Attorney General or Attorney General-elect and the Commissioner of the Bureau of
 27 Labor and Industries or the Commissioner-elect of the Bureau of Labor and Industries.

28 (19) “Zoning commission” means an entity to which is delegated at least some of the discre-
 29 tionary authority of a planning commission or governing body relating to zoning and land use mat-
 30 ters.

31 **SECTION 9.** ORS 244.130 is amended to read:

32 244.130. (1) When a public official gives notice of an actual or potential conflict of interest, the
 33 actual or potential conflict shall be recorded in the official records of the public body, and a notice
 34 of the actual or potential conflict and how it was disposed of may in the discretion of the public
 35 body be provided the Oregon Government Standards and Practices Commission within a reasonable
 36 period of time. [*The commission may by rule establish criteria for cases in which such information*
 37 *shall, shall not, or may be provided to it.*]

38 (2) [No] A decision or action of any public official or any board or commission on which the
 39 public official serves or agency by which the public official is employed [*shall*] **may not** be voided
 40 by any court solely by reason of the failure of the public official to disclose [*an actual or*] a potential
 41 conflict of interest.

42 **SECTION 10.** ORS 244.195 is amended to read:

43 244.195. (1) The city recorder or county clerk, respectively, shall provide to every person newly
 44 elected or appointed to any city or county office for which statements of financial interest are re-
 45 quired under ORS 244.050 information about the requirements of ORS 244.050, 244.060, 244.070,

1 244.080] and 244.090 either at the first meeting attended by the new officer or before the officer
 2 takes the oath of office, whichever is first.

3 (2) At the time of fulfilling duties under subsection (1) of this section, the city recorder or
 4 county clerk shall provide to each new officer a copy of the statements and explanation provided
 5 to the city recorder or county clerk under subsection (3) of this section.

6 (3) The Oregon Government Standards and Practices Commission shall provide copies of the
 7 statements described in ORS 244.060, 244.070[, 244.080] and 244.090 and an explanation of the re-
 8 quirements of the law relating to the statements to each city recorder and county clerk.

9 (4) Any person described in subsection (1) of this section who is not informed of the filing re-
 10 quirements under ORS 244.050, 244.060, 244.070[, 244.080] and 244.090 and provided with a copy of
 11 the statements and explanation described in subsection (3) of this section before taking the oath of
 12 office may resign that office within 90 days thereafter or before the next date specified in ORS
 13 244.050 for the filing of a statement, whichever is longer, without filing any statement and without
 14 sanction or penalty that might otherwise be imposed for not filing.

15 **SECTION 11.** ORS 244.270 is amended to read:

16 244.270. (1) If the Oregon Government Standards and Practices Commission finds that an ap-
 17 pointed public official has violated any provision of this chapter or any rule adopted [*pursuant*
 18 *thereto*] **under this chapter**, the finding [*shall constitute*] is prima facie evidence of unfitness where
 19 removal is authorized for cause either by law or pursuant to section 6, Article VII (Amended) of the
 20 Oregon Constitution.

21 **(2) If the commission finds that a public official has violated any provision of this chapter**
 22 **or any rule adopted under this chapter, the commission shall notify the public body, as de-**
 23 **defined in ORS 174.109, that the public official serves. The notice shall describe the violation**
 24 **and any action taken by the commission. The commission shall provide the notice not later**
 25 **than 10 business days after the date the commission takes final action against the public**
 26 **official.**

27
 28 **ADVISORY OPINIONS**

29
 30 **SECTION 12.** ORS 244.280 is amended to read:

31 244.280. (1) Upon the written request of [*any public official, candidate for public office or*] any
 32 person, or upon its own motion, the Oregon Government Standards and Practices Commission, under
 33 signature of the chairperson, may issue and publish **written commission advisory** opinions on the
 34 [*requirements*] **application of any provision** of this chapter[, *based on*] **to any proposed trans-**
 35 **action or action or any actual or hypothetical [*circumstances.*] circumstance. A commission ad-**
 36 **visory opinion, and a decision by the commission to issue an advisory opinion on its own**
 37 **motion, must be approved by a majority of the members of the commission. Legal counsel**
 38 **to the commission shall review a proposed commission advisory opinion before the opinion**
 39 **is considered by the commission.**

40 (2) **Not later than 60 days after the date the commission receives the written request for**
 41 **a commission advisory opinion, the commission shall issue either the opinion or a written**
 42 **denial of the request. The written denial shall explain the reasons for the denial. The com-**
 43 **mission may ask the person requesting the advisory opinion to supply additional information**
 44 **the commission considers necessary to render the opinion. The commission, by vote of a**
 45 **majority of the members of the commission, may extend the 60-day deadline by one period**

1 not to exceed 60 days.

2 (3) Except as provided in this subsection, unless the commission advisory opinion is re-
 3 vised or revoked, the commission or a court may not impose a penalty under ORS 244.350
 4 or 244.360 on a person for any good faith action the person takes in reliance on an advisory
 5 opinion issued under this section. The commission or a court may impose a penalty under
 6 ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission
 7 or court determines that the person omitted or misstated material facts in making the re-
 8 quest.

9 *[(2) If any public official or business with which the public official is associated is in doubt
 10 whether a proposed transaction or action constitutes a violation of this chapter, the public official or
 11 the business may request in writing a determination from the commission. If any public official is in
 12 doubt whether receipt of an honoraria is in violation of this chapter because the person paying the
 13 honoraria may be found to have a legislative or administrative interest, the public official shall request
 14 in writing a determination from the commission. The requester shall supply such information as the
 15 commission requests to enable it to issue the interpretation.]*

16 *[(3) A public official or business with which a public official is associated shall not be liable under
 17 this chapter, for any action or transaction carried out in accordance with an advisory interpretation
 18 issued under subsection (2) of this section. Such an advisory interpretation shall be considered a formal
 19 opinion having precedential effect and shall be subject to review by legal counsel to the commission
 20 before the interpretation is sent to the requester.]*

21 **SECTION 13.** Sections 14 and 15 of this 2007 Act are added to and made a part of ORS
 22 chapter 244.

23 **SECTION 14.** (1) Upon the written request of any person, the executive director of the
 24 Oregon Government Standards and Practices Commission may issue and publish written
 25 staff advisory opinions on the application of any provision of this chapter to any proposed
 26 transaction or action or any actual or hypothetical circumstance.

27 (2) Not later than 30 days after the date the executive director receives the written re-
 28 quest for a staff advisory opinion, the executive director shall issue either the opinion or a
 29 written denial of the request. The written denial shall explain the reasons for the denial. The
 30 executive director may ask the person requesting the advisory opinion to supply additional
 31 information the executive director considers necessary to render the opinion. The executive
 32 director may extend the 30-day deadline by one period not to exceed 30 days. The executive
 33 director shall clearly designate an opinion issued under this section as a staff advisory
 34 opinion.

35 (3) Except as provided in this subsection, unless the staff advisory opinion is revised or
 36 revoked, before imposing any penalty under ORS 244.350 or 244.360, the commission or a
 37 court shall consider whether the action that may be subject to penalty was taken in reliance
 38 on a staff advisory opinion issued under this section. If a penalty may be imposed on the
 39 person who requested the opinion, the commission or court is not required to consider reli-
 40 ance on the opinion if the commission or court determines that the person omitted or mis-
 41 stated material facts in making the request.

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

1 **opinion.**

2 **SECTION 15.** (1) Upon the written or oral request of any person, the executive director
 3 or other staff of the Oregon Government Standards and Practices Commission may issue
 4 written or oral staff advice on the application of any provision of this chapter to any pro-
 5 posed transaction or action or any actual or hypothetical circumstance. Any written advice
 6 not designated as a staff advisory opinion under section 14 of this 2007 Act is considered staff
 7 advice issued under this section.

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

11 **SECTION 16.** ORS 244.310 is amended to read:

12 244.310. (1) The Oregon Government Standards and Practices Commission shall appoint an
 13 executive director to serve at the pleasure of the commission.

14 (2) The executive director [*shall be*] is responsible for the administrative operations of the
 15 commission and shall perform such other duties as may be designated or assigned to the executive
 16 director from time to time by the commission. [*However,*]

17 (3) The commission [*shall*] **may** not delegate the power to [*make regulations*] **adopt rules** or
 18 issue **commission** advisory opinions to the executive director. **The executive director may issue**
 19 **staff advisory opinions as provided in section 14 of this 2007 Act.**

20
 21 **SANCTIONS**
 22

23 **SECTION 17.** ORS 244.050 is amended to read:

24 244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon
 25 Government Standards and Practices Commission a verified statement of economic interest as re-
 26 quired under this chapter:

27 (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the
 28 Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and mem-
 29 bers of the Legislative Assembly.

30 (b) Any judicial officer, including justices of the peace and municipal judges, except municipal
 31 judges in those cities where a majority of the votes cast in the subject city in the 1974 general
 32 election was in opposition to the ballot measure provided for in section 10, chapter 68, Oregon Laws
 33 1974 (special session), and except any pro tem judicial officer who does not otherwise serve as a
 34 judicial officer.

35 (c) Any candidate for an office designated in paragraph (a) or (b) of this subsection.

36 (d) The Deputy Attorney General.

37 (e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the
 38 Secretary of the Senate and the Chief Clerk of the House of Representatives.

39 (f) The Chancellor and Vice Chancellors of the Oregon University System and the president and
 40 vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the
 41 State Board of Higher Education.

42 (g) The following state officers:

43 (A) Adjutant General.

44 (B) Director of Agriculture.

45 (C) Manager of State Accident Insurance Fund Corporation.

- 1 (D) Water Resources Director.
- 2 (E) Director of Department of Environmental Quality.
- 3 (F) Director of Oregon Department of Administrative Services.
- 4 (G) State Fish and Wildlife Director.
- 5 (H) State Forester.
- 6 (I) State Geologist.
- 7 (J) Director of Human Services.
- 8 (K) Director of the Department of Consumer and Business Services.
- 9 (L) Director of the Department of State Lands.
- 10 (M) State Librarian.
- 11 (N) Administrator of Oregon Liquor Control Commission.
- 12 (O) Superintendent of State Police.
- 13 (P) Director of the Public Employees Retirement System.
- 14 (Q) Director of Department of Revenue.
- 15 (R) Director of Transportation.
- 16 (S) Public Utility Commissioner.
- 17 (T) Director of Veterans' Affairs.
- 18 (U) Executive Director of Oregon Government Standards and Practices Commission.
- 19 (V) Director of the State Department of Energy.
- 20 (W) Director and each assistant director of the Oregon State Lottery.
- 21 (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- 22 (i) Every elected city or county official except elected officials in those cities or counties where
- 23 a majority of votes cast in the subject city or county in any election on the issue of filing statements
- 24 of economic interest under this chapter was in opposition.
- 25 (j) Every member of a city or county planning, zoning or development commission except such
- 26 members in those cities or counties where a majority of votes cast in the subject city or county at
- 27 any election on the issue of filing statements of economic interest under this chapter was in oppo-
- 28 sition to the ballot measure provided for in section 10, chapter 68, Oregon Laws 1974 (special ses-
- 29 sion).
- 30 (k) The chief executive officer of a city or county who performs the duties of manager or prin-
- 31 cipal administrator of the city or county except such employees in those cities or counties where a
- 32 majority of votes cast in the subject city or county in an election on the issue of filing statements
- 33 of economic interest under this chapter was in opposition.
- 34 (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- 35 (m) Every member of a governing body of a metropolitan service district and the executive of-
- 36 ficer thereof.
- 37 (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- 38 (o) The chief administrative officer and the financial officer of each common and union high
- 39 school district, education service district and community college district.
- 40 (p) Every member of the following state boards and commissions:
- 41 (A) Board of Geologic and Mineral Industries.
- 42 (B) Oregon Economic and Community Development Commission.
- 43 (C) State Board of Education.
- 44 (D) Environmental Quality Commission.
- 45 (E) Fish and Wildlife Commission of the State of Oregon.

- 1 (F) State Board of Forestry.
- 2 (G) Oregon Government Standards and Practices Commission.
- 3 (H) Oregon Health Policy Commission.
- 4 (I) State Board of Higher Education.
- 5 (J) Oregon Investment Council.
- 6 (K) Land Conservation and Development Commission.
- 7 (L) Oregon Liquor Control Commission.
- 8 (M) Oregon Short Term Fund Board.
- 9 (N) State Marine Board.
- 10 (O) Mass transit district boards.
- 11 (P) Energy Facility Siting Council.
- 12 (Q) Board of Commissioners of the Port of Portland.
- 13 (R) Employment Relations Board.
- 14 (S) Public Employees Retirement Board.
- 15 (T) Oregon Racing Commission.
- 16 (U) Oregon Transportation Commission.
- 17 (V) Wage and Hour Commission.
- 18 (W) Water Resources Commission.
- 19 (X) Workers' Compensation Board.
- 20 (Y) Oregon Facilities Authority.
- 21 (Z) Oregon State Lottery Commission.
- 22 (AA) Pacific Northwest Electric Power and Conservation Planning Council.
- 23 (BB) Columbia River Gorge Commission.
- 24 (CC) Oregon Health and Science University Board of Directors.
- 25 (q) The following officers of the State Treasury:
- 26 (A) Chief Deputy State Treasurer.
- 27 (B) Executive Assistant to the State Treasurer.
- 28 (C) Director of the Investment Division.
- 29 (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
- 30 and 777.915 to 777.953.
- 31 (2) By April 15 next after the date an appointment takes effect, every appointed public official
- 32 on a board or commission listed in subsection (1) of this section shall file with the **Oregon Gov-**
- 33 **ernment Standards and Practices** Commission a statement of economic interest as required under
- 34 ORS 244.060, 244.070 and 244.090.
- 35 (3) By April 15 next after the filing deadline for the primary election, each candidate for elective
- 36 public office described in subsection (1) of this section shall file with the commission a statement
- 37 of economic interest as required under ORS 244.060, 244.070 and 244.090.
- 38 (4) Within 30 days after the filing deadline for the general election, each candidate for elective
- 39 public office described in subsection (1) of this section who was not a candidate in the preceding
- 40 primary election, or who was nominated for elective public office described in subsection (1) of this
- 41 section at the preceding primary election by write-in votes, shall file with the commission a state-
- 42 ment of economic interest as required under ORS 244.060, 244.070 and 244.090.
- 43 [(5) *The Legislative Assembly shall maintain a continuing review of the operation of this*
- 44 *chapter.*]
- 45 [(6)] (5) Subsections (1) to [(5)] (4) of this section apply only to persons who are incumbent,

1 elected or appointed officials as of April 15 and to persons who are candidates for office on April
 2 15. Those [sections] **subsections** also apply to persons who do not become candidates until 30 days
 3 after the filing deadline for the statewide general election.

4 [(7)(a)] **(6)** *[Failure to file the statement required by this section subjects a person to a civil penalty*
 5 *that may be imposed as specified in ORS 183.745, but the enforcement of this subsection does not re-*
 6 *quire the Oregon Government Standards and Practices Commission to follow the procedures in ORS*
 7 *244.260 before finding that a violation of this section has occurred.]*

8 [(b) *Failure to file the required statement in timely fashion shall be prima facie evidence of a vio-*
 9 *lation of this section.]*

10 [(c) *If within five days after the date on which the statement is to be filed under this section the*
 11 *statement has not been received by the commission,]* **If a statement required to be filed under this**
 12 **section has not been received by the commission within five days after the date the state-**
 13 **ment is due**, the commission shall notify the public official **or candidate** and give the public official
 14 **or candidate** not less than 15 days to comply with the requirements of this section. If the public
 15 official **or candidate** fails to comply by the date set by the commission, the commission may impose
 16 a civil penalty *[of \$5 for each day the statement is late beyond the date fixed by the commission. The*
 17 *maximum penalty that may be accrued under this section is \$1,000]* **as provided in ORS 244.350.**

18 [(d) *A civil penalty imposed under this subsection is in addition to and not in lieu of sanctions that*
 19 *may be imposed under ORS 244.380.]*

20 **SECTION 18.** ORS 244.350 is amended to read:

21 244.350. (1) The Oregon Government Standards and Practices Commission or the court under
 22 ORS 244.260 (8) may impose civil penalties not to exceed:

23 (a) Except as provided in paragraph (b) of this subsection, *[\$1,000]* **\$5,000** for *[violating]* **violation**
 24 **of** any provision of this chapter or any resolution adopted under *[this chapter]* **ORS 244.160.**

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

26 (2)(a) **Except as provided in paragraph (b) of this subsection**, the commission may impose
 27 civil penalties not to exceed \$1,000 for *[violating]* **violation of** any provision of ORS 192.660. *[How-*
 28 *ever,]*

29 (b) A civil penalty may not be imposed under this subsection if the violation occurred as a re-
 30 sult of the governing body of the public body acting upon the advice of the public body's counsel.

31 (3) The commission may impose civil penalties not to exceed \$250 for violation of ORS 293.708.
 32 **A civil penalty imposed under this subsection is in addition to and not in lieu of a civil pen-**
 33 **alty that may be imposed under subsection (1) of this section.**

34 (4)(a) **The commission may impose civil penalties on a person who fails to file the state-**
 35 **ment required under ORS 244.050. The commission is not required to follow the procedures**
 36 **in ORS 244.260 before finding that a violation of ORS 244.050 has occurred.**

37 (b) **Failure to file the required statement in timely fashion is prima facie evidence of a**
 38 **violation of ORS 244.050.**

39 (c) **The commission may impose a civil penalty of \$10 for each of the first 14 days the**
 40 **statement is late beyond the date set by law, or by the commission under ORS 244.050, and**
 41 **\$50 for each day thereafter. The maximum penalty that may be imposed under this sub-**
 42 **section is \$5,000.**

43 (d) **A civil penalty imposed under this subsection is in addition to and not in lieu of**
 44 **sanctions that may be imposed under ORS 244.380.**

45 (5) **In lieu of imposing a civil penalty under this section, the commission may issue a**

1 **written reprimand.**

2 [(4) Any penalty imposed under this section is in addition to and not in lieu of any other penalty
3 or sanction that may be imposed according to law, including removal from office.]

4 **SECTION 19.** ORS 244.360 is amended to read:

5 244.360. [The Oregon Government Standards and Practices Commission, in addition to civil pen-
6 alties prescribed in ORS 244.350, may require any public official who has financially benefited the
7 public official or any other person by violation of any provision of this chapter to forfeit twice the
8 amount that the public official or any other person realized from violating any provision of this
9 chapter.] **In addition to civil penalties imposed under ORS 244.350, if a public official has fi-
10 nancially benefited the public official or any other person by violating any provision of this
11 chapter, the Oregon Government Standards and Practices Commission or a court may im-
12 pose upon the public official a civil penalty in an amount equal to twice the amount the
13 public official or other person realized as a result of the violation.**

14 **SECTION 20.** ORS 244.380 is amended to read:

15 244.380. (1) [In the event that a public official or candidate subject to the requirements of this
16 chapter, fails to file a statement of economic interests required by this chapter, or by resolution adopted
17 pursuant thereto, the following actions shall be taken, irrespective of other penalties which may be im-
18 posed pursuant to this chapter if, after a hearing has been granted the public official and a penalty is
19 imposed under ORS 244.370, the public official continues to refuse to file a statement of economic in-
20 terests] **If the Oregon Government Standards and Practices Commission has imposed a civil
21 penalty under ORS 244.350 on a public official or candidate for failing to file a statement of
22 economic interest required under this chapter and the public official or candidate continues
23 to refuse to file the statement, the following apply:**

24 (a) [Except as to judges, no compensation shall be paid to a salaried public official. Upon notice
25 to the Oregon Department of Administrative Services or to the appropriate local authority from the
26 Oregon Government Standards and Practices Commission of the failure to file the required report when
27 due, compensation shall be withheld and the public official shall be barred from beginning or contin-
28 uing to exercise the official duty of the public official until such time as the public official complies
29 with the requirements of this chapter.] **The commission shall notify the Oregon Department of
30 Administrative Services or the local public body, as defined in ORS 174.109, that the public
31 official serves of the failure to file a statement of economic interest. Except for judges,
32 during the period beginning on the date the department or public body receives notice from
33 the commission and ending on the date the public official files the statement of economic
34 interest, the department or public body may not pay compensation to the public official and
35 the public official may not begin or continue to exercise the official duty of the public official.**
36 In the case of a public official who [receives no] **does not receive** compensation, the public official
37 [shall be barred from beginning or continuing the] **may not begin or continue to** exercise [of] the
38 official duty of the public official until [such time as a statement is filed as required under this
39 chapter] **the public official files the statement of economic interest.**

40 (b) [Upon notice from the commission to the] **In the case of a candidate for public office, the
41 commission shall notify the appropriate** chief elections officer of the **candidate's** failure to file
42 the statement required by this chapter[.]. The chief elections officer shall:

43 (A) If the notice is received on or before the 61st day before the date of the election, cause the
44 name of the candidate [for public office] to be removed from the ballot on which the name of the
45 candidate would otherwise appear; or

1 (B) If the candidate has been nominated or elected, refuse to issue a certificate of nomination
2 or election.

3 (2) If the name of a candidate for public office is removed from the ballot as provided in sub-
4 section (1) of this section, the name shall be removed in accordance with ORS 254.165.

5 **(3) As used in this section, “chief elections officer” has the meaning given that term in**
6 **ORS 254.005.**

7 **SECTION 21.** ORS 293.708 is amended to read:

8 293.708. (1) As used in this section:

9 (a) “Business” has the meaning given that term in ORS 244.020.

10 (b) “Business with which the person is associated” has the meaning given that term in ORS
11 244.020.

12 (c) “Relative” has the meaning given that term in ORS 244.020.

13 (2) When a **person who is a** member of the Oregon Investment Council becomes aware that
14 action on a matter pending before the council might lead to private pecuniary benefit or detriment
15 to the person, to a relative of the person or to a business with which the person or a relative of the
16 person is associated, the member shall notify in writing the State Treasurer or the Chief Deputy
17 State Treasurer that any action, decision or recommendation by the member might constitute an
18 actual or potential conflict of interest. The member shall provide the notice not later than three
19 business days after the member becomes aware of the possibility of an actual or potential conflict.

20 (3) Subsection (2) of this section does not apply if the pecuniary benefit or detriment arises out
21 of circumstances described in ORS 244.020 (14)(a) to (c).

22 **(4) Complaints of violations of this section may be made to the Oregon Government**
23 **Standards and Practices Commission for review and investigation as provided by ORS 244.260**
24 **and for possible imposition of civil penalties as provided by ORS 244.350 or 244.360.**

25 [(4)] (5) Nothing in this section excuses a member of the council from compliance with ORS
26 244.120.

27 **SECTION 22.** ORS 162.005 is amended to read:

28 162.005. As used in ORS 162.005 to 162.425 [*and 162.465*], unless the context requires otherwise:

29 (1) “Pecuniary benefit” means gain or advantage to the beneficiary or to a third person pursuant
30 to the desire or consent of the beneficiary, in the form of money, property, commercial interests or
31 economic gain, but does not include a political campaign contribution reported in accordance with
32 ORS chapter 260.

33 (2) “Public servant” [*includes*] **means:**

34 (a) [A *public officer or employee of the state or of any political subdivision thereof or of any gov-*
35 *ernmental instrumentality within the state*] **A public official as defined in ORS 244.020;**

36 (b) A person serving as an advisor, consultant or assistant at the request or direction of the
37 state, any political subdivision thereof or of any governmental instrumentality within the state;

38 (c) A person nominated, elected or appointed to become a public servant, although not yet oc-
39 cupying the position; and

40 (d) Jurors.

41 **SECTION 23.** ORS 244.260 is amended to read:

42 244.260. (1)(a) Upon its own instigation or signed complaint of any person, the Oregon Govern-
43 ment Standards and Practices Commission may undertake action in the Preliminary Review Phase
44 with respect to the contents of any statements filed under this chapter or resolution adopted [*pur-*
45 *suant thereto*] **under ORS 244.160** or any alleged violation of any provision of this chapter.

1 (b) The public official who is the subject of a complaint or of the commission's own action shall
2 be notified immediately upon receipt of the complaint or upon adoption of a motion by the commis-
3 sion to undertake any action concerning the public official. The notice shall be given by telephone
4 if the official can be reached and shall also be in writing mailed to the official. The notice shall
5 include the nature of the complaint or motion and a copy of all materials submitted along with the
6 complaint or materials which give rise to the commission's instigation of action on its own motion.
7 However, the official must also be notified in advance if an issue that may give rise to a motion to
8 undertake action on the commission's own instigation is to be discussed at a commission meeting.

9 (c) Before investigating any complaint or undertaking any investigation at the commission's own
10 instigation, if the public official who is the subject of the complaint or of the commission's own
11 action is a member of the Legislative Assembly, the commission shall determine whether the alleged
12 violation of any provision of this chapter involves conduct protected by section 9, Article IV of the
13 Oregon Constitution. If the commission determines that the conduct is protected by section 9, Arti-
14 cle IV of the Oregon Constitution, the commission shall dismiss the complaint or rescind its motion
15 as provided in paragraph (e) of this subsection.

16 (d) If the complaint has not been dismissed or the motion of the commission has not been
17 rescinded as described in paragraph (c) of this subsection, before investigating any complaint or
18 undertaking an investigation on the commission's own instigation, the commission shall make a
19 finding that there is cause to undertake an investigation, notify the public official who is the subject
20 of the investigation, identify the issues to be examined and shall confine its investigation to those
21 issues. If the commission finds reason to expand its investigation, it shall move to do so and shall
22 record in its minutes the issues to be examined before expanding the scope of its investigation and
23 formally notify the complainant, **if any**, and the public official who is the subject of the
24 [*complaint*] **investigation** of the expansion and the scope thereof.

25 (e) If the commission does not make a finding of cause, or if the commission determines that the
26 alleged violation of this chapter involves conduct protected by section 9, Article IV of the Oregon
27 Constitution, the commission shall dismiss the complaint or rescind its motion and shall formally
28 enter the dismissal or rescission on its records. The commission shall notify the public official of the
29 dismissal or rescission. After dismissal or rescission, the commission shall take no further action
30 involving the public official unless a new and different complaint is filed or action at its own insti-
31 gation is undertaken based on different conduct.

32 (2) The commission may:

33 (a) During the Preliminary Review Phase, seek, solicit or otherwise obtain any books, papers,
34 records, memoranda or other additional information, administer oaths and take depositions neces-
35 sary to determine whether there is cause or if the alleged violation is protected by section 9, Article
36 IV of the Oregon Constitution; and

37 (b) During the Investigatory Phase, require any additional information, administer oaths, take
38 depositions and issue subpoenas to compel attendance of witnesses and the production of books,
39 papers, records, memoranda or other information necessary to complete the investigation. If any
40 person fails to comply with any subpoena issued under this section or refuses to testify on any
41 matters on which the person may be lawfully interrogated, the procedure provided in ORS 183.440
42 shall be followed to compel compliance.

43 (3) The person conducting any inquiry or investigation shall do so in an impartial, objective
44 manner. All favorable and unfavorable information collected by the investigator shall be turned over
45 to the commission.

1 (4) The findings of the commission in any inquiry or investigation shall be reported impartially,
 2 including both favorable and unfavorable findings, and shall be made available to the public official
 3 who is the subject thereof, to the appointing authority, if any, and to the Attorney General for state
 4 public officials and to the appropriate district attorney for local public officials. The findings shall
 5 be made available to the Commission on Judicial Fitness and Disability in any investigation involv-
 6 ing a judge.

7 (5) Hearings relating to any charge of alleged violation of this chapter must be held before an
 8 administrative law judge assigned from the Office of Administrative Hearings established under ORS
 9 183.605. **Except as provided in subsection (8)(c) of this section,** the procedure shall be that for
 10 a contested case under ORS chapter 183.

11 (6)(a) The period of time from the filing of a complaint or from acting on the commission's own
 12 instigation to the finding of cause or dismissal of the complaint or rescission of the motion shall be
 13 termed the Preliminary Review Phase and shall not exceed 90 days unless a delay is stipulated to
 14 by both the public official and the Oregon Government Standards and Practices Commission with
 15 the commission reserving a portion of the delay period to complete its actions.

16 (b) The Preliminary Review Phase shall be confidential. Commission members and staff may
 17 acknowledge receipt of a complaint but shall make no public comment or publicly disclose any ma-
 18 terials relating to a case during the Preliminary Review Phase. A person who intentionally violates
 19 this paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved
 20 as a result of a violation of this paragraph by a member of the commission or its staff may file a
 21 petition in a court of competent jurisdiction in the county in which the petitioner resides in order
 22 to enforce the civil penalty provided in this paragraph.

23 (c) The commission's deliberations of a case at the conclusion of the Preliminary Review Phase
 24 shall be conducted in executive session. All case related materials and proceedings shall be open to
 25 the public after the commission makes a finding of cause, dismisses a complaint or rescinds a mo-
 26 tion. Prior to the end of the Preliminary Review Phase, the executive director of the commission
 27 shall prepare a statement of the facts determined during the phase, including appropriate legal ci-
 28 tations and relevant authorities. Before presentation to the commission, the executive director's
 29 statement shall be reviewed by legal counsel to the commission.

30 (d) The time limit imposed in this subsection and the commission's inquiry are suspended if:

31 (A) There is a pending criminal investigation that relates to the issues arising out of the
 32 underlying facts or conduct at issue in the matter before the commission unless the parties stipulate
 33 otherwise; or

34 (B) A court has enjoined the commission from continuing its inquiry.

35 (7)(a) The period of time from the finding of cause to the beginning of any contested case pro-
 36 ceedings shall be termed the Investigatory Phase and shall not exceed 120 days unless a delay is
 37 stipulated to by both the public official and the Oregon Government Standards and Practices Com-
 38 mission with the commission reserving a portion of the delay period to complete its actions.

39 (b) The time limit imposed in this subsection and the commission's investigation are suspended
 40 if:

41 (A) There is a pending criminal investigation that relates to the issues arising out of the
 42 underlying facts or conduct at issue in the matter before the commission unless the parties stipulate
 43 otherwise; or

44 (B) A court has enjoined the commission from continuing its investigation.

45 (c) At the end of the Investigatory Phase, the commission shall take action by order, which

1 action may include:

2 (A) Dismissal, with or without comment;

3 (B) Continuation of the investigation to determine further facts, but no more than one contin-
4 uation, not to exceed 30 days' duration, shall be taken;

5 (C) Moving to a contested case proceeding;

6 (D) Seeking a negotiated settlement; or

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

8 *[(8) If, at the end of the Investigatory Phase, the commission takes action by order to move to a*
9 *contested case proceeding, a public official may notify the commission that the official elects to have the*
10 *commission file a lawsuit against the official in the Marion County Circuit Court in lieu of the con-*
11 *tested case proceeding. The public official shall notify the commission of the election in writing no later*
12 *than 21 days after receiving notification of the commission's action by order to move to the contested*
13 *case proceeding. The commission shall file suit within 30 days after receiving notice that the public*
14 *official has elected the lawsuit procedure.]*

15 **(8)(a) If the commission takes action by order to move to a contested case proceeding,**
16 **the person who is the subject of the action may request that the commission file a lawsuit**
17 **against the person in the Marion County Circuit Court in lieu of the contested case pro-**
18 **ceeding. The person must make the request in writing not later than 21 days after receiving**
19 **notification of the commission's action by order to move to the contested case proceeding.**

20 **(b) Not later than 30 days after receiving a request under paragraph (a) of this sub-**
21 **section, the commission shall file suit in Marion County Circuit Court or move to a contested**
22 **case proceeding described in paragraph (c) of this subsection.**

23 **(c) If the commission moves to a contested case proceeding after receiving a request**
24 **under paragraph (a) of this subsection, the commission shall designate by order that the**
25 **decision of the administrative law judge referred to in subsection (5) of this section is the**
26 **final order in the contested case.**

27 (9) The commission shall not inquire into or investigate any complaint or act at its own insti-
28 gation on alleged conduct that occurred more than four years before the complaint is filed or action
29 is undertaken.

30 (10) Nothing in this section is intended to prevent the commission and the public official or
31 other person alleged to have violated this chapter from stipulating to a finding of fact concerning
32 the violation and consenting to an appropriate penalty. The commission shall enter an order ac-
33 cordingly.

34 (11) As used in this section:

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

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

42 **SECTION 24.** ORS 244.370 is amended to read:

43 244.370. (1) Any civil penalty under ORS 244.350 or 244.360 shall be imposed in the manner
44 prescribed by ORS 183.745.

45 (2) Notwithstanding ORS 183.745, a hearing *[shall be]* is required in all cases prior to imposition

1 of a penalty unless the public official **or candidate** waives the hearing. The public official **or can-**
 2 **didate** to whom the notice is addressed [*shall have*] **has** 10 days from the date of service of the
 3 notice in which to waive a hearing before the Oregon Government Standards and Practices Com-
 4 mission and the public official **or candidate** shall be so notified.

5 (3) All penalties recovered under ORS 244.350 and 244.360 shall be paid into the State Treasury
 6 and credited to the General Fund.

7 **SECTION 25.** ORS 244.400 is amended to read:

8 244.400. (1) A [*public official or person described in ORS 171.778*] **person** who prevails following
 9 a contested case hearing under this chapter **or ORS 171.778** or a lawsuit under ORS 244.260 **or**
 10 **171.778** shall be awarded reasonable attorney fees at the conclusion of the contested case or on
 11 appeal.

12 (2) Upon prevailing following [*the conclusion of*] a contested case **hearing** or lawsuit, the [*public*
 13 *official or*] person may petition the [*Circuit Court for*] Marion County **Circuit Court** for the purpose
 14 of determining the award of reasonable attorney fees. The Oregon Government Standards and
 15 Practices Commission shall be named as a respondent in the petition. The petitioner and respondent
 16 shall follow the procedure provided in ORCP 68 for the determination of reasonable attorney fees.
 17 The court shall give precedence on its docket to petitions filed under this subsection as the cir-
 18 cumstances may require.

19 (3) [*The Court of Appeals*] **An appellate court** shall award reasonable attorney fees to the
 20 [*public official or*] person if the [*public official*] **person** prevails on appeal from any [*decisions*] **de-**
 21 **cision** of the commission or of the Marion County Circuit Court.

22 (4) Attorney fees to be awarded under this section shall be only those fees incurred by the
 23 [*public official or*] person from the time the commission notifies the [*public official or*] person that
 24 it has entered an order to move to a contested case proceeding.

25 (5) Any attorney fees awarded to the [*public official*] **person** pursuant to this section shall be
 26 paid **by the commission from moneys appropriated** from the General Fund.

27
 28 **COMMISSION APPROPRIATION**

29
 30 **SECTION 26.** There is appropriated to the Oregon Government Standards and Practices
 31 Commission, for the biennium beginning July 1, 2007, out of the General Fund, the amount
 32 of \$_____.

33 **SECTION 27.** (1) On or before June 30 of each odd-numbered year, the Oregon Depart-
 34 ment of Administrative Services shall determine the amount of moneys needed by the
 35 Oregon Government Standards and Practices Commission for the next biennium to enable
 36 the commission to maintain the level of services authorized for the current biennium.

37 (2) On July 1 of each odd-numbered year, there is appropriated to the Oregon Govern-
 38 ment Standards and Practices Commission, for the biennium, out of the General Fund, the
 39 amount of moneys determined by the Oregon Department of Administrative Services in the
 40 manner provided in subsection (1) of this section.

41 (3) Moneys appropriated by this section are subject to allotment under ORS 291.230 to
 42 291.260.

43 **SECTION 28.** (1) Section 27 (2) of this 2007 Act first applies to the biennium beginning
 44 July 1, 2009, and applies to each biennium thereafter.

45 (2) The determination by the Oregon Department of Administrative Services required by

1 section 27 (1) of this 2007 Act shall be made first for the biennium beginning July 1, 2009, and
2 shall be based on the amount appropriated to the Oregon Government Standards and Prac-
3 tices Commission by section 26 of this 2007 Act.

4
5 **STATUS OF OFFICIAL ACTION**

6
7 **SECTION 29.** Section 30 of this 2007 Act is added to and made a part of ORS chapter 244.

8 **SECTION 30.** (1) If a public official takes official action by making a decision and the of-
9 ficial is disqualified by law from taking the action, the action is valid if:

10 (a) The official is disqualified solely by reason of the failure of the official to disclose a
11 potential conflict of interest;

12 (b) The public body that the official serves or a superior public official on whose behalf
13 the disqualified official took official action expressly reaffirms the action in writing and in-
14 cludes a description of all the reasons for disqualification of the official; or

15 (c) The official's only participation in the action was to cast a vote in making a collective
16 decision and the vote cast by the official was unnecessary to reach the collective decision
17 or the vote was necessary only as specified in ORS 244.120 (2).

18 (2) Subsection (1) of this section does not affect:

19 (a) Any other provision of law or equity that affects the validity or invalidity of an official
20 action taken by a public official;

21 (b) Any right or remedy otherwise available to any person; or

22 (c) Any applicable period of limitation or procedural prerequisite for a judicial remedy.

23 (3) As used in this section, "public body" has the meaning given that term in ORS 174.109.
24

25 **CONFORMING CHANGES**

26
27 **SECTION 31.** ORS 171.745 is amended to read:

28 171.745. (1) A lobbyist registered with the Oregon Government Standards and Practices Com-
29 mission or required to register with the commission shall, on January 31 and July 31, of each
30 even-numbered year, and on January 31, April 30 and July 31 of each odd-numbered year, file with
31 the commission a statement showing:

32 (a) The total amount of all moneys expended by the lobbyist for the purpose of lobbying in the
33 preceding reporting period for:

34 (A) Food, refreshments and entertainment;

35 (B) Printing, postage and telephone;

36 (C) Advertising, public relations, education and research; and

37 (D) Miscellaneous; and

38 (b) The name of any legislative or executive official to whom or for whose benefit, on any one
39 occasion, an expenditure in excess of \$25 is made for the purposes of lobbying, and the date, name
40 of payee, purpose and amount of that expenditure.

41 (2) Beginning on July 1, 1979, the dollar amount specified in subsection (1)(b) of this section
42 shall be adjusted annually by the commission based upon the change in the Portland Consumer Price
43 Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the
44 United States Department of Labor or its successor during the preceding 12-month period. The
45 amount determined under this subsection shall be rounded to the nearest dollar.

1 (3) Statements required by this section need not include amounts expended by the lobbyist for
 2 personal living and travel expenses and office overhead, including salaries and wages paid for staff
 3 and secretarial assistance, and maintenance expenses. If the amount of any expenditure required to
 4 be included in a statement is not accurately known at the time the statement is required to be filed,
 5 an estimate of the expenditure shall be submitted in the statement and designated as an estimate.
 6 The exact amount expended for which a previous estimate was made shall be submitted in a subse-
 7 quent report when the information is available.

8 (4) Notwithstanding ORS 171.735, 171.740 and subsections (1) to (3) of this section, a registered
 9 lobbyist, who engages in lobbying activities without compensation on behalf of an organization is
 10 not required to register as a lobbyist for the organization as long as the lobbying activity does not
 11 exceed the financial or time limits set in ORS 171.735 (4).

12 (5) A statement required by this section shall include a copy of any notice provided to a public
 13 official under ORS 244.100 [(3)].

14 (6) For each statement required by this section, an entity comprised of more than one lobbyist
 15 may file one statement that reports expenditures by the entity and not by individual lobbyists.

16 **SECTION 32.** ORS 171.750 is amended to read:

17 171.750. (1) Any person on whose behalf a lobbyist was registered, or was required to register
 18 with the Oregon Government Standards and Practices Commission at any time during the preceding
 19 calendar year, shall file with the commission, by January 31st of each year, a statement showing,
 20 for the preceding calendar year:

21 (a) The total amount of all moneys expended for lobbying activities on the person's behalf, ex-
 22 cluding living and travel expenses incurred for a lobbyist performing lobbying services.

23 (b) The name of any legislative or executive official to whom or for whose benefit, on any one
 24 occasion, an expenditure in excess of \$25 for the purpose of lobbying is made by the person, but not
 25 including information previously reported in compliance with ORS 171.745, and the date, name of
 26 payee, purpose and amount of that expenditure.

27 (2) Using July 1, 1979, as the base, the dollar amount specified in subsection (1)(b) of this section
 28 shall be adjusted annually by the commission based upon the change in the Portland Consumer Price
 29 Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the
 30 United States Department of Labor, or its successor, during the preceding 12-month period. The
 31 amount determined under this subsection shall be rounded to the nearest dollar.

32 (3) A statement required under subsection (1) of this section shall include a copy of any notice
 33 provided to a public official under ORS 244.100 [(3)].

34
 35 **MISCELLANEOUS PROVISIONS**

36
 37 **SECTION 33.** ORS 244.030 and 244.080 are repealed.

38 **SECTION 34.** (1) Sections 4, 5, 13, 14, 15, 29 and 30 of this 2007 Act, the amendments to
 39 ORS 162.005, 171.745, 171.750, 244.020, 244.050, 244.100, 244.110, 244.130, 244.195, 244.250, 244.260,
 40 244.270, 244.280, 244.290, 244.310, 244.350, 244.360, 244.370, 244.380, 244.390, 244.400 and 293.708
 41 by sections 1 to 3, 6 to 12, 16 to 25, 31 and 32 of this 2007 Act and the repeal of ORS 244.030
 42 and 244.080 by section 33 of this 2007 Act become operative January 1, 2008.

43 (2) The Oregon Government Standards and Practices Commission, a state agency as de-
 44 fined in ORS 183.750 and any statewide association of public bodies as defined in ORS 174.109
 45 may adopt rules or policies or take any other action before the operative date specified in

1 subsection (1) of this section that is necessary to enable the commission, the state agency
 2 or any public body that is a member of a statewide association of public bodies to exercise,
 3 on or after the operative date specified in subsection (1) of this section, all the duties, func-
 4 tions and powers conferred on the commission, state agency or public body by this 2007 Act.

5 **SECTION 35.** (1) Section 5 of this 2007 Act and the amendments to ORS 244.390 by section
 6 2 of this 2007 Act apply to alleged violations of any provision of ORS chapter 244 that occur
 7 on or after January 1, 2008.

8 (2) The amendments to ORS 244.280 by section 12 of this 2007 Act apply to commission
 9 advisory opinions issued on or after January 1, 2008.

10 (3) Section 14 of this 2007 Act applies to staff advisory opinions issued on or after Janu-
 11 ary 1, 2008.

12 (4) Section 15 of this 2007 Act applies to staff advice issued on or after January 1, 2008.

13 **SECTION 36.** Section 30 of this 2007 Act and the amendments to ORS 244.130 by section
 14 9 of this 2007 Act apply to decisions or actions made or taken by public officials on or after
 15 January 1, 2008.

16 **SECTION 37.** (1) The amendments to ORS 244.050 by section 17 of this 2007 Act apply to
 17 statements of economic interest required to be filed on or after January 1, 2008.

18 (2) The amendments to ORS 244.350 by section 18 of this 2007 Act apply to:

19 (a) Violations of any provision of ORS chapter 244 or any resolution adopted under ORS
 20 244.160 occurring on or after January 1, 2008;

21 (b) Violations of ORS 293.708 occurring prior to, on or after January 1, 2008; and

22 (c) Statements of economic interest required to be filed on or after January 1, 2008.

23 (3) The amendments to ORS 244.360 and 244.370 by sections 19 and 24 of this 2007 Act
 24 apply to violations of any provision of ORS chapter 244 or any resolution adopted under ORS
 25 244.160 occurring prior to, on or after January 1, 2008.

26 (4) The amendments to ORS 244.390 by section 2 of this 2007 Act apply to penalties or
 27 sanctions imposed, or written reprimands issued, for violations that occur on or after Janu-
 28 ary 1, 2008.

29 (5) The amendments to ORS 244.270 by section 11 of this 2007 Act apply to violations of
 30 any provision of ORS chapter 244 or any rule adopted under ORS chapter 244 occurring on
 31 or after January 1, 2008.

32 (6) The amendments to ORS 244.380 by section 20 of this 2007 Act apply to statements
 33 of economic interest required to be filed prior to, on or after January 1, 2008.

34 (7) The amendments to ORS 293.708 by section 21 of this 2007 Act apply to violations of
 35 ORS 293.708 occurring prior to, on or after January 1, 2008.

36 (8) The amendments to ORS 244.110 by section 7 of this 2007 Act apply to statements of
 37 economic interest required to be filed on or after January 1, 2008.

38 (9) The amendments to ORS 162.005 by section 22 of this 2007 Act apply to violations that
 39 occur on or after January 1, 2008.

40 (10) The amendments to ORS 244.260 and 244.400 by sections 23 and 25 of this 2007 Act
 41 apply to complaints filed on or after January 1, 2008, and actions first commenced by the
 42 Oregon Government Standards and Practices Commission on its own motion on or after
 43 January 1, 2008.

44 (11) The amendments to ORS 244.100 by section 6 of this 2007 Act apply to notices for
 45 expenses incurred on or after the effective date of this 2007 Act.

1 **SECTION 38.** (1) Any proceeding, action, prosecution or other business or matter
2 undertaken or commenced before January 1, 2008, by the Oregon Government Standards and
3 Practices Commission under any provision of ORS chapter 244 and still pending on January
4 1, 2008, shall be conducted and completed by the commission in the same manner, under the
5 same terms and conditions and with the same effect as though undertaken, conducted or
6 completed before January 1, 2008.

7 (2) Nothing in this 2007 Act relieves any person of any obligation with respect to any tax,
8 fee, fine, civil penalty or other charge, interest, penalty, forfeiture or other liability, duty or
9 obligation.

10 **SECTION 39.** The unit captions used in this 2007 Act are provided only for the conven-
11 ience of the reader and do not become part of the statutory law of this state or express any
12 legislative intent in the enactment of this 2007 Act.

13 **SECTION 40.** This 2007 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
15 July 1, 2007.

16 _____