

House Bill 2882

Sponsored by Representative LIM

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 to refer complaints and actions commission takes on its own motion to subcommittee of commission for initial determination of whether commission should investigate. Requires subcommittee to make recommendation to full commission within 30 days. Specifies that findings of subcommittee are confidential.

A BILL FOR AN ACT

1
2 Relating to government ethics; creating new provisions; and amending ORS 244.260.

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

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

5 244.260. (1)(a) Upon its own instigation or signed complaint of any person, the Oregon Govern-
6 ment Standards and Practices Commission may undertake action in the Preliminary Review Phase
7 with respect to the contents of any statements filed under this chapter or resolution adopted pur-
8 suant thereto or any alleged violation of any provision of this chapter.

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

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

24 (d) If the complaint has not been dismissed or the motion of the commission has not been
25 rescinded as described in paragraph (c) of this subsection, **the commission shall refer the com-**
26 **plaint or motion to a subcommittee consisting of three members of the commission ap-**
27 **pointed by the chairperson of the commission. Not later than 30 days after the complaint is**
28 **received or the commission instigates action on its own motion, the subcommittee shall de-**
29 **termine whether there is cause for the commission to undertake an investigation. The sub-**
30 **committee shall make a recommendation to the full commission. The findings of the**

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 **subcommittee are confidential.** Before investigating any complaint or undertaking an investi-
2 gation on the commission's own instigation, the commission shall **consider the recommendation**
3 **of the subcommittee,** make a finding that there is cause to undertake an investigation, notify the
4 public official who is the subject of the investigation, identify the issues to be examined and shall
5 confine its investigation to those issues. If the commission finds reason to expand its investigation,
6 it shall move to do so and shall record in its minutes the issues to be examined before expanding
7 the scope of its investigation and formally notify the complainant and the public official who is the
8 subject of the complaint of the expansion and the scope thereof.

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

16 (2) The commission may:

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

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

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

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

36 (5) Hearings relating to any charge of alleged violation of this chapter must be held before an
37 administrative law judge assigned from the Office of Administrative Hearings established under ORS
38 183.605. The procedure shall be that for a contested case under ORS chapter 183.

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

44 (b) The Preliminary Review Phase shall be confidential. Commission members and staff may
45 acknowledge receipt of a complaint but shall make no public comment or publicly disclose any ma-

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

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

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

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

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

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

22 (b) The time limit imposed in this subsection and the commission’s investigation are suspended
 23 if:

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

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

28 (c) At the end of the Investigatory Phase, the commission shall take action by order, which
 29 action may include:

30 (A) Dismissal, with or without comment;

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

33 (C) Moving to a contested case proceeding;

34 (D) Seeking a negotiated settlement; or

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

36 (8) If, at the end of the Investigatory Phase, the commission takes action by order to move to
 37 a contested case proceeding, a public official may notify the commission that the official elects to
 38 have the commission file a lawsuit against the official in the Marion County Circuit Court in lieu
 39 of the contested case proceeding. The public official shall notify the commission of the election in
 40 writing no later than 21 days after receiving notification of the commission’s action by order to
 41 move to the contested case proceeding. The commission shall file suit within 30 days after receiving
 42 notice that the public official has elected the lawsuit procedure.

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

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

5 (11) As used in this section:

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

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

13 **SECTION 2. The amendments to ORS 244.260 by section 1 of this 2007 Act apply to com-**
14 **plaints received by and action instigated by the Oregon Government Standards and Practices**
15 **Commission on its own motion on or after the effective date of this 2007 Act.**

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