

# Enrolled House Bill 2518

Sponsored by Representative ROBLAN; Representatives BARKER, BEYER, BUCKLEY, D EDWARDS, GARRARD, GELSER, GREENLICK, HARKER, HOLVEY, NATHANSON, RILEY, STIEGLER, THATCHER, WHISNANT, Senators BATES, BURDICK, JOHNSON, MORRISSETTE

CHAPTER .....

## AN ACT

Relating to government ethics; creating new provisions; amending ORS 244.020, 244.047, 244.175 and 244.350 and sections 28 and 29, chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30); repealing ORS 244.380 and section 22, chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30); and declaring an emergency.

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

**SECTION 1.** 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 (11) 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 owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

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

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

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

(5)(a) "Gift" means something of economic value given to a public official or a relative or member of the household of the public official:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.

(D) Informational **or program** material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization before whom the public official appears to speak or to answer questions as part of a scheduled program.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code [*and that receives less than five percent of its funding from for-profit organizations or entities*], for attendance at a convention, fact-finding mission or trip, **conference** or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official at a continuing education event that the public official may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or a relative or member of the household of the public official that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

**(O) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.**

(6) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

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

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

(9) "Member of the household" means any person who resides with the public official.

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

(11) "Potential 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 could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

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

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

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

(12) "Public office" has the meaning given that term in ORS 260.005.

(13) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.

(14) "Relative" means:

(a) The spouse of the public official;

(b) The domestic partner of the public official;

(c) Any children of the public official or of the public official's spouse;

(d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;

(e) Any individual for whom the public official has a legal support obligation; or

(f) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment.

(15) "Statement of economic interest" means a statement as described by ORS 244.060, 244.070 or 244.100.

(16) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters.

**SECTION 2.** ORS 244.020, as amended by section 1 of this 2009 Act and section 2, chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30), 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 (12) 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 owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

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

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(4) "Candidate" means an individual for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is printed on a ballot or is expected to be or has been presented, with the individual's consent, for nomination or election to public office.

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

(6)(a) "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or  
(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

[(O)] (P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

(7) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

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

(9) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.

(10) "Member of the household" means any person who resides with the public official or candidate.

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

(12) "Potential 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 could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

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

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

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

(13) "Public office" has the meaning given that term in ORS 260.005.

(14) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

(15) "Relative" means:

(a) The spouse of the public official or candidate;

[(b) *The domestic partner of the public official or candidate;*]

[(c)] (b) Any children of the public official or of the public official's spouse [*or domestic partner*];

[(d)] (c) Any children of the candidate or of the candidate's spouse [*or domestic partner*];

[(e)] (d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse [*or domestic partner*];

[(f)] (e) Siblings, spouses of siblings or parents of the candidate or of the candidate's spouse [*or domestic partner*];

[(g)] (f) Any individual for whom the public official or candidate has a legal support obligation;  
[(h)] (g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or

[(i)] (h) Any individual from whom the candidate receives benefits arising from that individual's employment.

(16) "Statement of economic interest" means a statement as described by ORS 244.060 or 244.070.

(17) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters.

**SECTION 3.** ORS 244.175 is amended to read:

244.175. As used in ORS 244.177 and 244.179:

(1) "Governing body" has the meaning given that term in ORS 192.610.

(2) "Member of the household" means any person who resides with the public official.

(3) "Public body" has the meaning given that term in ORS 174.109.

(4) "Relative" means the spouse [*or domestic partner*] of the public official, any children of the public official or of the public official's spouse [*or domestic partner*], and brothers, sisters, half brothers, half sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law, fathers-in-law, aunts, uncles, nieces, nephews, stepparents, stepchildren or parents of the public official or of the public official's spouse [*or domestic partner*].

**SECTION 4.** ORS 244.350 is amended to read:

244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to exceed:

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

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

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

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

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

(4)(a) The commission may impose civil penalties on a person who fails to file the statement required under ORS 244.050, 244.100 or 244.217. In enforcing this subsection, the commission is not required to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050, 244.100 or 244.217 has occurred.

(b) Failure to file the required statement in timely fashion is prima facie evidence of a violation of ORS 244.050, 244.100 or 244.217.

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

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

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

**SECTION 4a.** ORS 244.047 is amended to read:

244.047. (1) As used in this section:

(a) "Public body" has the meaning given that term in ORS 174.109.

(b) "Public contract" has the meaning given that term in ORS 279A.010.

(2) Except as provided in subsection [(3)] (4) of this section, a person [*may not, for two years after the person*] **who** ceases to hold a position as a public official[,] **may not** have a direct beneficial financial interest in a public contract [*that was authorized by:*] **described in subsection (3) of this section for two years after the date the contract was authorized.**

**(3) Subsection (2) of this section applies to a public contract that was authorized by:**

(a) The person acting in the capacity of a public official; or

(b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.

[(3)] (4) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract.

**SECTION 5.** Section 28, chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30), is amended to read:

**Sec. 28.** (1) Section 26 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, the amendments to sections 8b and 9e, chapter 877, Oregon Laws 2007, by sections 24 and 25 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, and the amendments to ORS 171.745, 171.750, 244.010, 244.020, 244.025, 244.040, 244.042, 244.050, [244.060,] 244.070, [244.100,] 244.105, 244.110, 244.255, 244.282, 244.290, 244.320, [244.350, 244.380,] 244.390, 293.708 and 441.540 by sections 1 to 5, 7, 9 to 15, 17 to 21 and 23 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, become operative on January 1, 2010.

(2) The Oregon Government Ethics Commission may adopt rules or take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the commission to exercise, on or after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred upon the commission by [*this 2009 Act*] **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**.

**SECTION 6.** Section 29, chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30), is amended to read:

**Sec. 29.** (1) The amendments to ORS 244.025 and 244.040 by sections 3 and 4 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, apply to gifts solicited, received or offered on or after January 1, 2010.

(2) The amendments to ORS 244.060, 244.100 and 244.350 by sections 6, 8 and 16 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, apply to statements filed with the Oregon Government Ethics Commission on or after [*January 1, 2010*] **the effective date of this 2009 Act.**

(3) The amendments to ORS 244.050 by section 5 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, apply to statements required to be filed with the Oregon Government Ethics Commission for reporting periods beginning on or after January 1, 2010.

(4) The amendments to ORS 244.282 and 244.320 by sections 12 and 15 [*of this 2009 Act*], **chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30)**, apply to activities that occur on or after January 1, 2010.

**SECTION 7.** ORS 244.380 and section 22, chapter 68, Oregon Laws 2009 (Enrolled Senate Bill 30) (amending ORS 244.380), are repealed.

**SECTION 8.** (1) The amendments to ORS 244.020 by section 1 of this 2009 Act apply to expenses paid for activities that occur on or after the effective date of this 2009 Act.

(2) The amendments to ORS 244.047 by section 4a of this 2009 Act apply to a person who ceases to hold a position as a public official on or after the effective date of this 2009 Act.

**SECTION 9.** The amendments to ORS 244.020 and 244.175 by sections 2 and 3 of this 2009 Act become operative on January 1, 2010.

**SECTION 10.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

**Passed by House May 22, 2009**

**Repassed by House June 22, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 17, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State