

Senate Bill 85

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Designates certain information relating to Oregon Government Ethics Commission adjudication process as confidential.

Declaring emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to government ethics adjudication process; creating new provisions; amending ORS 171.778
3 and 244.260; and declaring an emergency.

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

5 **SECTION 1.** ORS 171.778 is amended to read:

6 171.778. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
7 written complaint alleging that there has been a violation of any provision of ORS 171.725 to 171.785
8 or of any rule adopted by the commission under ORS 171.725 to 171.785. The complaint shall state
9 the person's reason for believing that a violation occurred and include any evidence relating to the
10 alleged violation.

11 (b) If at any time the commission has reason to believe that there has been a violation of a
12 provision of ORS 171.725 to 171.785 or of a rule adopted by the commission under ORS 171.725 to
13 171.785, the commission may proceed under this section on its own motion as if the commission had
14 received a complaint.

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

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

22 (c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of
23 this subsection by mail and by telephone if the person can be reached by telephone. The notice must
24 describe the nature of the alleged violation. The mailed notice must include copies of all materials
25 submitted with a complaint. If the commission will consider a motion to proceed without a com-
26 plaint, the notice must provide copies of all materials that the commission will consider at the
27 hearing on the motion.

28 **(d) Information that the commission considers before approving a motion to proceed on**
29 **its own motion under this section and any correspondence regarding the motion or potential**
30 **violation is confidential. Commission members and staff may not make any public comment**

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 **or publicly disclose any materials relating to the motion pending the commission's approval**
2 **to proceed. A person who intentionally violates this paragraph is subject to a civil penalty**
3 **in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation of this**
4 **paragraph by a member of the commission or its staff may file a petition in a court of**
5 **competent jurisdiction in the county in which the petitioner resides in order to enforce the**
6 **civil penalty provided in this paragraph.**

7 (3) After receiving a complaint or deciding to proceed on its own motion, the commission shall
8 undertake action in the Preliminary Review Phase to determine whether there is cause to undertake
9 an investigation.

10 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
11 commission decides to proceed on its own motion and ends on the date the commission determines
12 there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion.
13 The Preliminary Review Phase may not exceed 135 days unless a delay is stipulated to by both the
14 subject person and the commission, with the commission reserving a portion of the delay period to
15 complete its actions.

16 (b) During the Preliminary Review Phase, the commission may seek, solicit or otherwise obtain
17 any books, papers, records, memoranda or other additional information, administer oaths and take
18 depositions necessary to determine whether there is cause to undertake an investigation.

19 (c) The Preliminary Review Phase is confidential. Commission members and staff may acknowl-
20 edge receipt of a complaint but may not make any public comment or publicly disclose any materials
21 relating to a case during the Preliminary Review Phase. A person who intentionally violates this
22 paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as
23 a result of a violation of this paragraph by a member of the commission or its staff may file a peti-
24 tion in a court of competent jurisdiction in the county in which the petitioner resides in order to
25 enforce the civil penalty provided in this paragraph.

26 (d) At the conclusion of the Preliminary Review Phase, the commission shall conduct its deliber-
27 ations in executive session. All case related materials and proceedings shall be open to the public
28 after the commission makes a finding of cause to undertake an investigation, dismisses a complaint
29 or rescinds a motion. Prior to the end of the Preliminary Review Phase, the executive director of
30 the commission shall prepare a statement of the facts determined during the phase, including ap-
31 propriate legal citations and relevant authorities. Before presentation to the commission, the exec-
32 utive director's statement shall be reviewed by legal counsel to the commission.

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

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

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

38 (5)(a) If the commission determines that there is not cause to undertake an investigation, the
39 commission shall dismiss the complaint or rescind its motion and formally enter the dismissal or
40 rescission in its records. The commission shall notify the person who is the subject of the inquiry
41 of the dismissal or rescission. After dismissal or rescission, the commission may not take further
42 action involving the person unless a new and different complaint is filed or action on the commis-
43 sion's own motion is undertaken based on different conduct.

44 (b) If the commission makes a finding of cause to undertake an investigation, the commission
45 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the

1 subject of the investigation, identify the issues to be examined and confine the investigation to those
2 issues. If the commission finds reason to expand the investigation, the commission shall move to do
3 so, record in its minutes the issues to be examined before expanding the scope of its investigation
4 and formally notify the complainant, if any, and the person who is the subject of the investigation
5 of the expansion and the scope of the investigation.

6 (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to
7 undertake an investigation and ends on the date the commission dismisses the complaint, rescinds
8 its own motion, issues a settlement order, moves to commence a contested case proceeding or takes
9 other action justified by the findings. The Investigatory Phase may not exceed 180 days unless a
10 delay is stipulated to by both the subject person and the commission, with the commission reserving
11 a portion of the delay period to complete its actions.

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

18 (c) The time limit imposed in this subsection and the commission's investigation are suspended
19 if:

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

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

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

26 (A) Dismissal, with or without comment;

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

29 (C) Moving to a contested case proceeding;

30 (D) Entering into a negotiated settlement; or

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

32 (e) The commission may move to a contested case proceeding if the commission determines that
33 the information presented to the commission is sufficient to make a preliminary finding of a violation
34 of any provision of ORS 171.725 to 171.785 or of any rule adopted by the commission under ORS
35 171.725 to 171.785.

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

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

38 (b) Provide to the commission all favorable and unfavorable information the person collects.

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

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

43 (b) Any employer of the person.

44 (9) Hearings conducted under ORS 171.725 to 171.785 must be held before an administrative law
45 judge assigned from the Office of Administrative Hearings established under ORS 183.605. The pro-

1 cedure shall be that for a contested case under ORS chapter 183.

2 (10) The commission may not inquire into or investigate any conduct that occurred more than
3 four years before a complaint is filed or a motion is approved under subsection (1) of this section.

4 (11) This section does not prevent the commission and the person alleged to have violated any
5 provision of ORS 171.725 to 171.785 or any rule adopted by the commission under ORS 171.725 to
6 171.785 from stipulating to a finding of fact concerning the violation and consenting to an appro-
7 priate penalty. The commission shall enter an order based on the stipulation and consent.

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

10 (13) As used in this section, "cause" and "pending" have the meanings given those terms in ORS
11 244.260.

12 **SECTION 2.** ORS 244.260 is amended to read:

13 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
14 written complaint alleging that there has been a violation of any provision of this chapter or of any
15 rule adopted by the commission under this chapter. The complaint shall state the person's reason
16 for believing that a violation occurred and include any evidence relating to the alleged violation.

17 (b) If at any time the commission has reason to believe that there has been a violation of a
18 provision of this chapter or of a rule adopted by the commission under this chapter, the commission
19 may proceed under this section on its own motion as if the commission had received a complaint.

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

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

27 (c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of
28 this subsection by mail and by telephone if the person can be reached by telephone. The notice must
29 describe the nature of the alleged violation. The mailed notice must include copies of all materials
30 submitted with a complaint. If the commission will consider a motion to proceed without a com-
31 plaint, the notice must provide copies of all materials that the commission will consider at the
32 hearing on the motion.

33 **(d) Information that the commission considers before approving a motion to proceed on**
34 **its own motion under this section and any correspondence regarding the motion or potential**
35 **violation is confidential. Commission members and staff may not make any public comment**
36 **or publicly disclose any materials relating to the motion pending the commission's approval**
37 **to proceed. A person who intentionally violates this paragraph is subject to a civil penalty**
38 **in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation of this**
39 **paragraph by a member of the commission or its staff may file a petition in a court of**
40 **competent jurisdiction in the county in which the petitioner resides in order to enforce the**
41 **civil penalty provided in this paragraph.**

42 (3) After receiving a complaint or deciding to proceed on its own motion, the commission shall
43 undertake action in the Preliminary Review Phase to determine whether there is cause to undertake
44 an investigation. If the person who is the subject of the action is a member of the Legislative As-
45 sembly, the commission shall determine whether the alleged violation involves conduct protected by

1 section 9, Article IV of the Oregon Constitution.

2 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
3 commission decides to proceed on its own motion and ends on the date the commission determines
4 there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion.
5 The Preliminary Review Phase may not exceed 135 days unless:

6 (A) A delay is stipulated to by both the person who is the subject of action under this section
7 and the commission with the commission reserving a portion of the delay period to complete its
8 actions; or

9 (B) A complaint is filed under this section with respect to a person who is a candidate for
10 elective public office, the complaint is filed within 61 days before the date of an election at which
11 the person is a candidate for nomination or election and a delay is requested in writing by the
12 candidate. If the candidate makes a request under this subparagraph, the Preliminary Review Phase
13 must be completed not later than 135 days after the date of the first meeting of the commission that
14 is held after the date of the election.

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

19 (c) The Preliminary Review Phase is confidential. Commission members and staff may acknowl-
20 edge receipt of a complaint but may not make any public comment or publicly disclose any materials
21 relating to a case during the Preliminary Review Phase. A person who intentionally violates this
22 paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as
23 a result of a violation of this paragraph by a member of the commission or its staff may file a peti-
24 tion in a court of competent jurisdiction in the county in which the petitioner resides in order to
25 enforce the civil penalty provided in this paragraph.

26 (d) At the conclusion of the Preliminary Review Phase, the commission shall conduct its delib-
27 erations in executive session. All case related materials and proceedings shall be open to the public
28 after the commission makes a finding of cause to undertake an investigation, dismisses a complaint
29 or rescinds a motion. Prior to the end of the Preliminary Review Phase, the executive director of
30 the commission shall prepare a statement of the facts determined during the phase, including ap-
31 propriate legal citations and relevant authorities. Before presentation to the commission, the exec-
32 utive director's statement shall be reviewed by legal counsel to the commission.

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

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

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

38 (5)(a) If the commission determines that there is not cause to undertake an investigation or that
39 the alleged violation of this chapter involves conduct protected by section 9, Article IV of the
40 Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and formally
41 enter the dismissal or rescission in its records. The commission shall notify the person who is the
42 subject of action under this section of the dismissal or rescission. After dismissal or rescission, the
43 commission may not take further action involving the person unless a new and different complaint
44 is filed or action on the commission's own motion is undertaken based on different conduct.

45 (b) If the commission makes a finding of cause to undertake an investigation, the commission

1 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
 2 subject of the investigation, identify the issues to be examined and confine the investigation to those
 3 issues. If the commission finds reason to expand the investigation, the commission shall move to do
 4 so, record in its minutes the issues to be examined before expanding the scope of its investigation
 5 and formally notify the complainant, if any, and the person who is the subject of the investigation
 6 of the expansion and the scope of the investigation.

7 (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to
 8 undertake an investigation and ends on the date the commission dismisses the complaint, rescinds
 9 its own motion, issues a settlement order, moves to commence a contested case proceeding or takes
 10 other action justified by the findings. The Investigatory Phase may not exceed 180 days unless a
 11 delay is stipulated to by both the person who is the subject of action under this section and the
 12 commission with the commission reserving a portion of the delay period to complete its actions.

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

19 (c) The time limit imposed in this subsection and the commission's investigation are suspended
 20 if:

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

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

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

27 (A) Dismissal, with or without comment;

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

30 (C) Moving to a contested case proceeding;

31 (D) Entering into a negotiated settlement; or

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

33 (e) The commission may move to a contested case proceeding if the commission determines that
 34 the information presented to the commission is sufficient to make a preliminary finding of a violation
 35 of any provision of this chapter or of any rule adopted by the commission under this chapter.

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

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

38 (b) Provide to the commission all favorable and unfavorable information the person collects.

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

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

43 (b) The appointing authority, if any;

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

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

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

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

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

8 (11) This section does not prevent the commission and the person alleged to have violated any
9 provision of this chapter or any rule adopted by the commission under this chapter from stipulating
10 to a finding of fact concerning the violation and consenting to an appropriate penalty. The com-
11 mission shall enter an order based on the stipulation and consent.

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

14 (13) As used in this section:

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

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

22 **SECTION 3. The amendments to ORS 171.778 and 244.260 by sections 1 and 2 of this 2009**
23 **Act apply to information or correspondence first considered by the Oregon Government**
24 **Ethics Commission on or after the effective date of this 2009 Act.**

25 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
27 **on its passage.**

28