

House Bill 2427

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Rules)

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**.

Requires Oregon Government Ethics Commission to proceed as expeditiously as possible in complaint and adjudicatory process when candidate for public office is alleged to have violated ethics law or rule.

A BILL FOR AN ACT

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

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

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

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

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

25 (d) Information that the commission considers before approving a motion to proceed on its own
26 motion under this section and any correspondence regarding the motion or potential violation is
27 confidential. Commission members and staff may not make any public comment or publicly disclose
28 any materials relating to the motion pending the commission's approval to proceed. A person who
29 intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed \$1,000.
30 Any person aggrieved as a result of a violation of this paragraph by a member of the commission

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 its staff may file a petition in a court of competent jurisdiction in the county in which the
 2 petitioner resides in order to enforce the civil penalty provided in this paragraph.

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

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

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

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

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

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

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

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

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

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

44 (5)(a) If the commission determines that there is not cause to undertake an investigation or that
 45 the alleged violation of this chapter involves conduct protected by section 9, Article IV of the

1 Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and formally
 2 enter the dismissal or rescission in its records. The commission shall notify the person who is the
 3 subject of action under this section of the dismissal or rescission. After dismissal or rescission, the
 4 commission may not take further action involving the person unless a new and different complaint
 5 is filed or action on the commission's own motion is undertaken based on different conduct.

6 (b) If the commission makes a finding of cause to undertake an investigation, the commission
 7 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
 8 subject of the investigation, identify the issues to be examined and confine the investigation to those
 9 issues. If the commission finds reason to expand the investigation, the commission shall move to do
 10 so, record in its minutes the issues to be examined before expanding the scope of its investigation
 11 and formally notify the complainant, if any, and the person who is the subject of the investigation
 12 of the expansion and the scope of the investigation.

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

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

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

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

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

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

33 (A) Dismissal, with or without comment;

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

36 (C) Moving to a contested case proceeding;

37 (D) Entering into a negotiated settlement; or

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

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

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

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

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

45 (8) The commission shall report the findings of any inquiry or investigation in an impartial

1 manner. The commission shall report both favorable and unfavorable findings and shall make the
 2 findings available to:

- 3 (a) The person who is the subject of the inquiry or investigation;
- 4 (b) The appointing authority, if any;
- 5 (c) The Attorney General, if the findings relate to a state public official;
- 6 (d) The appropriate district attorney, if the findings relate to a local public official; and
- 7 (e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge.

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

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

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

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

20 **(13) A proceeding under this section involving a candidate for public office has priority**
 21 **over all other proceedings and shall be resolved as expeditiously as possible in accordance**
 22 **with rules adopted by the commission.**

23 [(13)] (14) As used in this section:

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

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

31 _____