

House Bill 2019

Sponsored by Representative KOTEK, Senators FERRIOLI, COURTNEY, Representative HOYLE, Senator ROSENBAUM (at the request of Governor Kate Brown)

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**.

Expands membership of Oregon Government Ethics Commission from seven members to nine members on July 1, 2016.

Directs Governor, Secretary of State, State Treasurer, Attorney General and Commissioner of Bureau of Labor and Industries to each appoint one member of commission without leadership recommendation.

Makes executive director of commission responsible for conducting Preliminary Review Phase of ethics complaints. Requires executive director to present to commission recommendation on ethics complaint or commission's own motion, with commission responsible for determining whether to conduct Investigatory Phase or to dismiss complaint or rescind motion. Limits period of time for Preliminary Review Phase to 30 days. Limits ability of commission or executive director to extend duration of Preliminary Review Phase.

Requires commission to make complaint filed with or motion acted upon by, and findings issued by, commission searchable on Internet on or after January 1, 2017, in instances where commission takes action by order other than dismissal of complaint, rescission of motion or continuation of investigation.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Government Ethics Commission; creating new provisions; amending ORS
3 244.250, 244.260 and 244.290; and declaring an emergency.

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

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

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

10 (a) The Governor shall appoint four members from among persons recommended, one each by
11 the leadership of the Democratic and Republican parties in each house of the Legislative Assembly.
12 If a person recommended by the leadership of the Democratic or Republican party is not approved
13 by the Governor, the leadership shall recommend another person.

14 (b) The Governor, **Secretary of State, State Treasurer, Attorney General and Commis-**
15 **sioner of the Bureau of Labor and Industries** shall **each** appoint **one member** [*three members*]
16 without leadership recommendation. No more than [*two*] **three** members appointed under this para-
17 graph may be members of the same major political party.

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

21 (3) The term of office of a member is four years. A member is not eligible to be appointed to
22 more than one full term but may serve out an unexpired term. Vacancies shall be filled by the ap-

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 pointing authority for the unexpired term.

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

4 (5) A quorum consists of [*four*] **five** members, but a final decision may not be made without an
5 affirmative vote of a majority of the members appointed to the commission.

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

7 (7) The commission may retain or appoint qualified legal counsel who must be a member of the
8 Oregon State Bar and who is responsible to the commission. The appointment of legal counsel under
9 this subsection may be made only when the commission finds it is inappropriate and contrary to the
10 public interest for the office of the Attorney General to represent concurrently more than one public
11 official or agency in any matter before the commission because the representation:

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

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

14 (8) The Attorney General may not represent before the commission any state public official who
15 is the subject of any complaint or action of the commission at the commission's own instigation.

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

17 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
18 written complaint alleging that there has been a violation of any provision of this chapter or of any
19 rule adopted by the commission under this chapter. The complaint shall state the person's reason
20 for believing that a violation occurred and include any evidence relating to the alleged violation.

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

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

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

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

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

1 (3) After *[receiving]* **the commission receives** a complaint or *[deciding]* **decides** to proceed on
 2 its own motion, the **executive director of the** commission shall undertake action in the Preliminary
 3 Review Phase to determine whether there is cause to undertake an investigation. If the person who
 4 is the subject of the action is a member of the Legislative Assembly, the *[commission]* **executive**
 5 **director** shall determine whether the alleged violation involves conduct protected by **Article IV**,
 6 section 9, *[Article IV]* of the Oregon Constitution.

7 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
 8 commission decides to proceed on its own motion and ends on the date the commission determines
 9 there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion.
 10 The Preliminary Review Phase may not exceed *[135]* **30** days unless[:]

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

14 *[(B)]* a complaint is filed under this section with respect to a person who is a candidate for
 15 elective public office, the complaint is filed within 61 days before the date of an election at which
 16 the person is a candidate for nomination or election and a delay is requested in writing by the
 17 candidate. If the candidate makes a request under this *[subparagraph]* **paragraph**, the Preliminary
 18 Review Phase must be completed not later than *[135]* **30** days *[after the date of the first meeting of*
 19 *the commission that is held]* after the date of the election.

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

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

33 **(d)(A) Prior to the end of the Preliminary Review Phase, the executive director of the**
 34 **commission shall prepare a statement of the facts determined during the phase, including**
 35 **appropriate legal citations and relevant authorities. Before presentation to the commission,**
 36 **the executive director's statement shall be reviewed by legal counsel to the commission.**

37 *[(d)]* **(B) At the conclusion of the Preliminary Review Phase, the executive director of the**
 38 **commission shall attend an executive session of the commission where the executive director**
 39 **shall present the statement of the facts and summarize the results of the Preliminary Re-**
 40 **view Phase to the commission and recommend to the commission whether there is cause to**
 41 **undertake an investigation or whether the commission should instead dismiss the complaint**
 42 **or rescind its motion.**

43 **(C) At the** *[commission shall conduct its deliberations in]* executive session, **the commission**
 44 **shall consider the recommendation of the executive director and make the final determi-**
 45 **nation as to whether there is cause to undertake an investigation or whether the commission**

1 **should instead dismiss the complaint or rescind its motion.**

2 (D) All case related materials and proceedings shall be open to the public after the commission
 3 makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion.
 4 *[Prior to the end of the Preliminary Review Phase, the executive director of the commission shall pre-*
 5 *pare a statement of the facts determined during the phase, including appropriate legal citations and*
 6 *relevant authorities. Before presentation to the commission, the executive director's statement shall be*
 7 *reviewed by legal counsel to the commission.]*

8 (e) The time limit imposed in this subsection and the commission's inquiry are suspended if[.]

9 [(A) *There is a pending criminal investigation that relates to the issues arising out of the under-*
 10 *lying facts or conduct at issue in the matter before the commission unless the parties stipulate other-*
 11 *wise; or]*

12 [(B)] a court has enjoined the **executive director or the** commission from continuing [its] **the**
 13 inquiry.

14 (5)(a) If the commission determines that there is not cause to undertake an investigation or that
 15 the alleged violation of this chapter involves conduct protected by **Article IV**, section 9, [*Article*
 16 *IV*] of the Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and
 17 formally enter the dismissal or rescission in its records. The commission shall notify the person who
 18 is the subject of action under this section of the dismissal or rescission. After dismissal or
 19 rescission, the commission may not take further action involving the person unless a new and dif-
 20 ferent complaint is filed or action on the commission's own motion is undertaken based on different
 21 conduct.

22 (b) If the commission makes a finding of cause to undertake an investigation, the commission
 23 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
 24 subject of the investigation, identify the issues to be examined and confine the investigation to those
 25 issues. If the commission finds reason to expand the investigation, the commission shall move to do
 26 so, record in its minutes the issues to be examined before expanding the scope of its investigation
 27 and formally notify the complainant, if any, and the person who is the subject of the investigation
 28 of the expansion and the scope of the investigation.

29 (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to
 30 undertake an investigation and ends on the date the commission dismisses the complaint, rescinds
 31 its own motion, issues a settlement order, moves to commence a contested case proceeding or takes
 32 other action justified by the findings. **Except as provided in this subsection**, the Investigatory
 33 Phase may not exceed 180 days unless a delay is stipulated to by both the person who is the subject
 34 of action under this section and the commission with the commission reserving a portion of the de-
 35 lay period to complete its actions.

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

42 (c) The time limit imposed in this subsection and the commission's investigation [*are suspended*
 43 *if*]:

44 (A) **May be suspended if** there is a pending criminal investigation that relates to the issues
 45 arising out of the underlying facts or conduct at issue in the matter before the commission **and the**

1 **commission determines that it cannot adequately complete its investigation until the pending**
 2 **criminal investigation is complete** [*unless the parties stipulate otherwise*]; or

3 (B) **Are suspended if** a court has enjoined the commission from continuing its investigation.

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

6 (A) Dismissal, with or without comment;

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

9 (C) Moving to a contested case proceeding;

10 (D) Entering into a negotiated settlement; or

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

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

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

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

17 (b) Provide to the **executive director or the** commission all favorable and unfavorable infor-
 18 mation the person collects.

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

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

23 (b) The appointing authority, if any;

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

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

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

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

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

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

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

39 (13) As used in this section:

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

43 (b) "Pending" means that a prosecuting attorney is either actively investigating the factual basis
 44 of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has
 45 obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of ne-

1 negotiating a plea.

2 **SECTION 3.** ORS 244.290, as amended by section 9d, chapter 877, Oregon Laws 2007, and sec-
 3 tion 14, chapter 68, Oregon Laws 2009, is amended to read:

4 244.290. (1) The Oregon Government Ethics Commission shall:

5 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
 6 required to file the statements under this chapter or pursuant to a resolution adopted under ORS
 7 244.160.

8 (b) Develop a filing, coding and cross-indexing system consistent with the purposes of this
 9 chapter.

10 (c) Prepare and publish reports the commission finds are necessary.

11 *[(d) Make advisory opinions issued by the commission or the executive director of the commission*
 12 *available to the public at no charge on the Internet.]*

13 *[(e)]* (d) Accept and file any information voluntarily supplied that exceeds the requirements of
 14 this chapter.

15 *[(f)]* (e) Make statements and other information filed with the commission available for public
 16 inspection and copying during regular office hours, and make copying facilities available at a charge
 17 not to exceed actual cost.

18 *[(g)]* (f) Not later than February 1 of each odd-numbered year, report to the Legislative Assem-
 19 bly any recommended changes to provisions of ORS 171.725 to 171.785 or this chapter.

20 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
 21 171.785 and 171.992 and this chapter, including rules to:

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

24 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
 25 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
 26 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
 27 the public disclosure;

28 (c) Establish an administrative process whereby a person subpoenaed by the commission may
 29 obtain a protective order;

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

32 (e) Establish a procedure under which the commission shall conduct accuracy audits of a sample
 33 of reports or statements filed with the commission under this chapter or ORS 171.725 to 171.785;

34 (f) Describe the application of provisions exempting items from the definition of "gift" in ORS
 35 244.020;

36 (g) Specify when a continuing violation is considered a single violation or a separate and dis-
 37 tinct violation for each day the violation occurs; and

38 (h) Set criteria for determining the amount of civil penalties that the commission may impose.

39 (3) The commission may adopt rules that:

40 (a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes
 41 that qualify under the class exception from the definition of "potential conflict of interest" under
 42 ORS 244.020;

43 (b) Require the disclosure and reporting of gifts or other compensation made to or received by
 44 a public official or candidate;

45 (c) Establish criteria for cases in which information relating to notices of actual or potential

1 conflicts of interest shall, may not or may be provided to the commission under ORS 244.130; or

2 (d) Allow the commission to accept the filing of a statement containing less than all of the in-
3 formation required under ORS 244.060 and 244.070 if the public official or candidate certifies on the
4 statement that the information contained on the statement previously filed is unchanged or certifies
5 only as to any changed material.

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

7 (a) Consider adoption of rules the commission deems necessary to implement or interpret pro-
8 visions of this chapter relating to issues the commission determines are of general interest to public
9 officials or candidates or that are addressed by the commission or by commission staff on a recur-
10 ring basis; and

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

13 (5) The commission shall adopt by rule an electronic filing system under which statements re-
14 quired to be filed under ORS 244.050 and 244.217 must be filed, without a fee, with the commission
15 in an electronic format.

16 (6) The commission shall make [*statements filed under ORS 244.050 and 244.217*] available in a
17 searchable format for review by the public using the Internet:

18 (a) **Statements filed under ORS 244.050 and 244.217;**

19 (b) **Advisory opinions issued by the commission or the executive director of the com-**
20 **mission; and**

21 (c) **Complaints filed with or motions acted upon by, and the findings issued by, the com-**
22 **mission under ORS 244.260 in instances where, at the end of the Investigatory Phase, the**
23 **commission takes action by order other than dismissal of the complaint, rescission of the**
24 **motion or continuation of the investigation. Nothing in this paragraph requires the com-**
25 **mission to make publicly available materials that are otherwise exempt from public disclo-**
26 **sure or that are required to be kept confidential by the commission.**

27 **SECTION 4. Notwithstanding ORS 244.250 (1)(b), the first two member positions to the**
28 **Oregon Government Ethics Commission created by the amendments to ORS 244.250 by sec-**
29 **tion 1 of this 2015 Act shall be appointed by the State Treasurer and the Attorney General.**

30 **SECTION 5. (1) The amendments to ORS 244.250 by section 1 of this 2015 Act become**
31 **operative on July 1, 2016.**

32 (2) **The amendments to ORS 244.260 by section 2 of this 2015 Act apply to complaints filed**
33 **on or after the effective date of this 2015 Act.**

34 (3) **The amendments to ORS 244.290 by section 3 of this 2015 Act become operative on**
35 **January 1, 2017.**

36 **SECTION 6. This 2015 Act being necessary for the immediate preservation of the public**
37 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
38 **on its passage.**