

A-Engrossed
Senate Bill 294

Ordered by the Senate May 6
Including Senate Amendments dated May 6

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 John A. Kitzhaber, M.D., 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.

Grants Oregon Government Ethics Commission administrative rulemaking authority to assist in commission's enforcement of executive session provisions of public meeting laws.

Prohibits commission from using rulemaking authority to establish what entities are considered representatives of news media that are entitled to attend executive sessions.

A BILL FOR AN ACT

1
2 Relating to executive session provisions of public meeting law; creating new provisions; and
3 amending ORS 192.660 and 244.290.

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

5 **SECTION 1.** ORS 244.290 is amended to read:

6 244.290. (1) The Oregon Government Ethics Commission shall:

7 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
8 required to file the statements under this chapter or pursuant to a resolution adopted under ORS
9 244.160.

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

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

13 (d) Make advisory opinions issued by the commission or the executive director of the commis-
14 sion available to the public at no charge on the Internet.

15 (e) Accept and file any information voluntarily supplied that exceeds the requirements of this
16 chapter.

17 (f) Make statements and other information filed with the commission available for public in-
18 spection and copying during regular office hours, and make copying facilities available at a charge
19 not to exceed actual cost.

20 (g) Not later than February 1 of each odd-numbered year, report to the Legislative Assembly
21 any recommended changes to provisions of ORS 171.725 to 171.785 or this chapter.

22 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
23 171.785, [*and*] 171.992, **192.660 and 192.685** and this chapter, including rules to:

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

26 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS

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.

1 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
2 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
3 the public disclosure;

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

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

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

10 (f) Describe the application of provisions exempting items from the definition of "gift" in ORS
11 244.020;

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

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

15 (3) The commission may adopt rules that:

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

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

21 (c) Establish criteria for cases in which information relating to notices of actual or potential
22 conflicts of interest shall, may not or may be provided to the commission under ORS 244.130; or

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

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

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

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

34 (5) The commission shall adopt by rule an electronic filing system under which statements re-
35 quired to be filed under ORS 244.050 and 244.217 may be filed, without a fee, with the commission
36 in an electronic format. The commission shall accept statements filed under ORS 244.050 and 244.217
37 in a format that is not electronic.

38 (6) The commission shall make statements filed under ORS 244.050 and 244.217, including state-
39 ments that are not filed in an electronic format, available in a searchable format for review by the
40 public using the Internet.

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

43 244.290. (1) The Oregon Government Ethics Commission shall:

44 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
45 required to file the statements under this chapter or pursuant to a resolution adopted under ORS

1 244.160.

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

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

5 (d) Make advisory opinions issued by the commission or the executive director of the commis-
6 sion available to the public at no charge on the Internet.

7 (e) Accept and file any information voluntarily supplied that exceeds the requirements of this
8 chapter.

9 (f) Make statements and other information filed with the commission available for public in-
10 spection and copying during regular office hours, and make copying facilities available at a charge
11 not to exceed actual cost.

12 (g) Not later than February 1 of each odd-numbered year, report to the Legislative Assembly
13 any recommended changes to provisions of ORS 171.725 to 171.785 or this chapter.

14 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
15 171.785, [and] 171.992, **192.660 and 192.685** and this chapter, including rules to:

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

18 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
19 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
20 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
21 the public disclosure;

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

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

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

28 (f) Describe the application of provisions exempting items from the definition of "gift" in ORS
29 244.020;

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

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

33 (3) The commission may adopt rules that:

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

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

39 (c) Establish criteria for cases in which information relating to notices of actual or potential
40 conflicts of interest shall, may not or may be provided to the commission under ORS 244.130; or

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

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

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

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

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

10 (6) The commission shall make statements filed under ORS 244.050 and 244.217 available in a
11 searchable format for review by the public using the Internet.

12 **SECTION 3.** ORS 192.660 is amended to read:

13 192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from
14 holding executive session during a regular, special or emergency meeting, after the presiding officer
15 has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

16 (2) The governing body of a public body may hold an executive session:

17 (a) To consider the employment of a public officer, employee, staff member or individual agent.

18 (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought
19 against, a public officer, employee, staff member or individual agent who does not request an open
20 hearing.

21 (c) To consider matters pertaining to the function of the medical staff of a public hospital li-
22 censed pursuant to ORS 441.015 to 441.063 including, but not limited to, all clinical committees,
23 executive, credentials, utilization review, peer review committees and all other matters relating to
24 medical competency in the hospital.

25 (d) To conduct deliberations with persons designated by the governing body to carry on labor
26 negotiations.

27 (e) To conduct deliberations with persons designated by the governing body to negotiate real
28 property transactions.

29 (f) To consider information or records that are exempt by law from public inspection.

30 (g) To consider preliminary negotiations involving matters of trade or commerce in which the
31 governing body is in competition with governing bodies in other states or nations.

32 (h) To consult with counsel concerning the legal rights and duties of a public body with regard
33 to current litigation or litigation likely to be filed.

34 (i) To review and evaluate the employment-related performance of the chief executive officer of
35 any public body, a public officer, employee or staff member who does not request an open hearing.

36 (j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding
37 proposed acquisition, exchange or liquidation of public investments.

38 (k) If the governing body is a health professional regulatory board, to consider information ob-
39 tained as part of an investigation of licensee or applicant conduct.

40 (L) If the governing body is the State Landscape Architect Board, or an advisory committee to
41 the board, to consider information obtained as part of an investigation of registrant or applicant
42 conduct.

43 (m) To discuss information about review or approval of programs relating to the security of any
44 of the following:

45 (A) A nuclear-powered thermal power plant or nuclear installation.

1 (B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal
2 power plant or nuclear installation.

3 (C) Generation, storage or conveyance of:

4 (i) Electricity;

5 (ii) Gas in liquefied or gaseous form;

6 (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

7 (iv) Petroleum products;

8 (v) Sewage; or

9 (vi) Water.

10 (D) Telecommunication systems, including cellular, wireless or radio systems.

11 (E) Data transmissions by whatever means provided.

12 (3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides
13 request that negotiations be conducted in executive session. Labor negotiations conducted in exec-
14 utive session are not subject to the notification requirements of ORS 192.640.

15 (4) Representatives of the news media shall be allowed to attend executive sessions other than
16 those held under subsection (2)(d) of this section relating to labor negotiations or executive session
17 held pursuant to ORS 332.061 (2) but the governing body may require that specified information be
18 undisclosed.

19 (5) When a governing body convenes an executive session under subsection (2)(h) of this section
20 relating to conferring with counsel on current litigation or litigation likely to be filed, the governing
21 body shall bar any member of the news media from attending the executive session if the member
22 of the news media is a party to the litigation or is an employee, agent or contractor of a news media
23 organization that is a party to the litigation.

24 (6) No executive session may be held for the purpose of taking any final action or making any
25 final decision.

26 (7) The exception granted by subsection (2)(a) of this section does not apply to:

27 (a) The filling of a vacancy in an elective office.

28 (b) The filling of a vacancy on any public committee, commission or other advisory group.

29 (c) The consideration of general employment policies.

30 (d) The employment of the chief executive officer, other public officers, employees and staff
31 members of a public body unless:

32 (A) The public body has advertised the vacancy;

33 (B) The public body has adopted regular hiring procedures;

34 (C) In the case of an officer, the public has had the opportunity to comment on the employment
35 of the officer; and

36 (D) In the case of a chief executive officer, the governing body has adopted hiring standards,
37 criteria and policy directives in meetings open to the public in which the public has had the op-
38 portunity to comment on the standards, criteria and policy directives.

39 (8) A governing body may not use an executive session for purposes of evaluating a chief exec-
40 utive officer or other officer, employee or staff member to conduct a general evaluation of an agency
41 goal, objective or operation or any directive to personnel concerning agency goals, objectives, op-
42 erations or programs.

43 (9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

44 (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to
45 the substance and disposition of licensee or applicant conduct investigated by a health professional

1 regulatory board.

2 (b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to
3 the substance and disposition of registrant or applicant conduct investigated by the State Landscape
4 Architect Board or an advisory committee to the board.

5 **(10) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not**
6 **adopt rules that establish what entities are considered representatives of the news media**
7 **that are entitled to attend executive sessions under subsection (4) of this section.**

8 **SECTION 4. The amendments to ORS 192.660 and 244.290 by sections 1 to 3 of this 2015**
9 **Act apply to alleged violations of ORS 192.660 that occur on or after the effective date of this**
10 **2015 Act.**

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