

# House Bill 2096

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown 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**.

Permits court to withhold award all or part of attorney fees to person who prevails against Oregon Government Ethics Commission in contested case proceeding if court finds that commission's action was substantially justified or that special circumstances exist.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to payment of attorney fees in contested cases involving the Oregon Government Ethics  
3 Commission; creating new provisions; amending ORS 244.400; and prescribing an effective date.

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

5 **SECTION 1.** ORS 244.400 is amended to read:

6 244.400. (1) A person who prevails following a contested case hearing under this chapter or ORS  
7 171.778 [*shall*] **may** be awarded reasonable attorney fees at the conclusion of the contested case or  
8 on appeal.

9 (2) Upon prevailing following a contested case hearing [*or lawsuit*], the person may petition the  
10 Marion County Circuit Court for the purpose of determining the award of reasonable attorney fees.  
11 The Oregon Government Ethics Commission shall be named as a respondent in the petition. The  
12 petitioner and respondent shall follow the procedure provided in ORCP 68 for the determination of  
13 reasonable attorney fees. The court:

14 (a) **Shall allow the petitioner reasonable attorney fees and costs if the court finds in favor**  
15 **of the petitioner and determines that the commission acted without a reasonable basis in**  
16 **fact or in law.**

17 (b) **May withhold all or part of the attorney fees from any allowance to a petitioner if the**  
18 **court finds that the commission has proved that its action was substantially justified or that**  
19 **special circumstances exist that make the allowance of all or part of the attorney fees un-**  
20 **just.**

21 (c) **Shall** give precedence on its docket to petitions filed under this subsection as the circum-  
22 stances may require.

23 (3) An appellate court [*shall*] **may** award reasonable attorney fees to the person if the person  
24 prevails on appeal from any decision of the commission. **The appellate court shall allow the per-**  
25 **son reasonable attorney fees and costs if the court finds in favor of the person and deter-**  
26 **mines that the commission acted without a reasonable basis in fact or in law. The appellate**  
27 **court may withhold all or part of the attorney fees from any allowance to a person if the**  
28 **court finds that the commission has proved that its action was substantially justified or that**  
29 **special circumstances exist that make the allowance of all or part of the attorney fees un-**  
30 **just.**

**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 (4) Attorney fees to be awarded under this section shall be only those fees incurred by the  
2 person from the time the commission notifies the person that it has entered an order to move to a  
3 contested case proceeding.

4 (5) Any attorney fees awarded to the person pursuant to this section shall be paid **from funds**  
5 **available to the commission** [*by the commission from moneys appropriated or allocated to the com-*  
6 *mission from the General Fund*].

7 **SECTION 2. The amendments to ORS 244.400 by section 1 of this 2019 Act apply to at-**  
8 **torney fees awarded for contested case proceedings that begin on or after the effective date**  
9 **of this 2019 Act.**

10 **SECTION 3. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
11 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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