

House Bill 2709

Sponsored by Representative RAYFIELD (Pre-session filed.)

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**.

Lists specified types of expenditures that are definitively considered to be made in coordination with candidates for purposes of determining whether expenditure is considered independent expenditure.

Amends definition of "communication in support of or in opposition to a clearly identified candidate or measure" with respect to independent expenditures to explicitly adopt federal reasonable person standard.

Lowers threshold for required filing of statement of independent expenditures to \$250 per calendar year and requires statement to be filed within seven days after expenditure is made.

Increases penalties from 10 percent to, depending on amount of contribution or expenditure, 20 percent or 40 percent of total amount of contribution or expenditure for failure to file required statements or certificates, for failure to include required information in statements or certificates, for incorrectly identifying expenditure as independent expenditure and for failing to timely file accurate statements for in-kind contributions.

Requires person making independent expenditures of more than \$250 in calendar year to maintain detailed accounts that are current not later than seven days after triggering required report. Requires account records to be kept for at least two years.

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.005, 260.044, 260.055
3 and 260.232.

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

5 **SECTION 1.** ORS 260.005, as amended by section 14, chapter 70, Oregon Laws 2018, is amended
6 to read:

7 260.005. As used in this chapter:

8 (1)(a) "Candidate" means:

9 (A) An individual whose name is printed on a ballot, for whom a declaration of candidacy,
10 nominating petition or certificate of nomination to public office has been filed or whose name is
11 expected to be or has been presented, with the individual's consent, for nomination or election to
12 public office;

13 (B) An individual who has solicited or received and accepted a contribution, made an expendi-
14 ture, or given consent to an individual, organization, political party or political committee to solicit
15 or receive and accept a contribution or make an expenditure on the individual's behalf to secure
16 nomination or election to any public office at any time, whether or not the office for which the in-
17 dividual will seek nomination or election is known when the solicitation is made, the contribution
18 is received and retained or the expenditure is made, and whether or not the name of the individual
19 is printed on a ballot; or

20 (C) A public office holder against whom a recall petition has been completed and filed.

21 (b) For purposes of this section and ORS 260.035 to 260.156, "candidate" does not include a
22 candidate for the office of precinct committee person.

23 (2) "Committee director" means any person who directly and substantially participates in

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 decision-making on behalf of a political committee concerning the solicitation or expenditure of
 2 funds and the support of or opposition to candidates or measures. The officers of a political party
 3 shall be considered the directors of any political party committee of that party, unless otherwise
 4 provided in the party's bylaws.

5 (3) Except as provided in ORS 260.007, "contribute" or "contribution" includes:

6 (a) The payment, loan, gift, forgiving of indebtedness, or furnishing without equivalent compen-
 7 sation or consideration, of money, services other than personal services for which no compensation
 8 is asked or given, supplies, equipment or any other thing of value:

9 (A) For the purpose of influencing an election for public office or an election on a measure, or
 10 of reducing the debt of a candidate for nomination or election to public office or the debt of a pol-
 11 itical committee; or

12 (B) To or on behalf of a candidate, political committee or measure; and

13 (b) The excess value of a contribution made for compensation or consideration of less than
 14 equivalent value.

15 (4) "Controlled committee" means a political committee that, in connection with the making of
 16 contributions or expenditures:

17 (a) Is controlled directly or indirectly by a candidate or a controlled committee; or

18 (b) Acts jointly with a candidate or controlled committee.

19 (5) "Controlled directly or indirectly by a candidate" means:

20 (a) The candidate, the candidate's agent, a member of the candidate's immediate family or any
 21 other political committee that the candidate controls has a significant influence on the actions or
 22 decisions of the political committee; or

23 (b) The candidate's principal campaign committee and the political committee both have the
 24 candidate or a member of the candidate's immediate family as a treasurer or director.

25 (6) "County clerk" means the county clerk or the county official in charge of elections.

26 (7) "Elector" means an individual qualified to vote under Article II, section 2, of the Oregon
 27 Constitution.

28 (8) Except as provided in ORS 260.007, "expend" or "expenditure" includes the payment or fur-
 29 nishing of money or anything of value or the incurring or repayment of indebtedness or obligation
 30 by or on behalf of a candidate, political committee or person in consideration for any services,
 31 supplies, equipment or other thing of value performed or furnished for any reason, including support
 32 of or opposition to a candidate, political committee or measure, or for reducing the debt of a can-
 33 didate for nomination or election to public office. "Expenditure" also includes contributions made
 34 by a candidate or political committee to or on behalf of any other candidate or political committee.

35 (9) "Filing officer" means:

36 (a) The Secretary of State:

37 (A) Regarding a candidate for public office;

38 (B) Regarding a statement required to be filed under ORS 260.118;

39 (C) Regarding any measure; or

40 (D) Regarding any political committee.

41 (b) In the case of an irrigation district formed under ORS chapter 545, "filing officer" means:

42 (A) The county clerk, regarding any candidate for office or any measure at an irrigation district
 43 formation election where the proposed district is situated wholly in one county;

44 (B) The county clerk of the county in which the office of the secretary of the proposed irrigation
 45 district will be located, regarding any candidate for office or any measure at an irrigation district

1 formation election where the proposed district is situated in more than one county; or

2 (C) The secretary of the irrigation district for any election other than an irrigation district
3 formation election.

4 (10) "Independent expenditure" means an expenditure by a person for a communication in sup-
5 port of or in opposition to a clearly identified candidate or measure that is not made with the co-
6 operation or with the prior consent of, or in consultation with, or at the request or suggestion of,
7 a candidate or any agent or authorized committee of the candidate, or any political committee or
8 agent of a political committee supporting or opposing a measure. For purposes of this subsection:

9 (a) "Agent" means any person who has:

10 (A) Actual oral or written authority, either express or implied, to make or to authorize the
11 making of expenditures on behalf of a candidate or on behalf of a political committee supporting or
12 opposing a measure; or

13 (B) Been placed in a position within the campaign organization where it would reasonably ap-
14 pear that in the ordinary course of campaign-related activities the person may authorize expen-
15 ditures.

16 (b)(A) "Clearly identified" means, with respect to candidates:

17 (i) The name of the candidate involved appears;

18 (ii) A photograph or drawing of the candidate appears; or

19 (iii) The identity of the candidate is apparent by unambiguous reference.

20 (B) "Clearly identified" means, with respect to measures:

21 (i) The ballot number of the measure appears;

22 (ii) A description of the measure's subject or effect appears; or

23 (iii) The identity of the measure is apparent by unambiguous reference.

24 (c) "Communication in support of or in opposition to a clearly identified candidate or measure"
25 means:

26 (A)(i) The communication, **when taken as a whole and with limited reference to external**
27 **events, such as the proximity to the election, could only be interpreted by a reasonable per-**
28 **son as containing advocacy of the election or defeat of** [*in its context, clearly and unambiguously*
29 *urges the election or defeat of*] a clearly identified candidate for nomination or election to public of-
30 fice, or the passage or defeat of a clearly identified measure, **or as encouraging some other kind**
31 **of action; and**

32 (ii) [*The communication, as a whole, seeks action rather than simply conveying information*] **The**
33 **electoral portion of the communication is unmistakable, unambiguous and suggestive of only**
34 **one meaning; [and] or**

35 [*iii It is clear what action the communication advocates; or*]

36 (B)(i) The communication contains aggregate expenditures of more than [~~\$750~~] **\$250** by a person;

37 (ii) The communication refers to a clearly identified candidate who will appear on the ballot or
38 to a political party; and

39 (iii) The communication is published and disseminated to the relevant electorate within 30 cal-
40 endar days before a primary election or 60 calendar days before a general election.

41 (d) "Made with the cooperation or with the prior consent of, or in consultation with, or at the
42 request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any
43 political committee or agent of a political committee supporting or opposing a measure":

44 (A) Means any arrangement, coordination or direction by the candidate or the candidate's agent,
45 or by any political committee or agent of a political committee supporting or opposing a measure,

1 prior to the publication, distribution, display or broadcast of the communication. **For purposes of**
 2 **this definition:**

3 (i) **An expenditure shall be definitively considered to be so made whenever:**

4 (I) **A candidate solicits moneys or appears at a fund-raiser for a group and the group**
 5 **then makes expenditures to benefit the candidate.**

6 (II) **A group led by a family member of the candidate or by an individual who was em-**
 7 **ployed within the preceding 12 months as a staff member of the candidate makes expen-**
 8 **ditures that benefit the candidate's campaign.**

9 (III) **A candidate provides information to a group about the candidate's campaign needs**
 10 **and the group makes expenditures accordingly.**

11 (IV) **A candidate and a group employ the same consultant to provide professional services**
 12 **relating to campaign or fund-raising strategy during the same electoral cycle and the group**
 13 **makes expenditures to benefit the candidate.**

14 (V) **A group republishes or redistributes materials from a candidate's campaign commu-**
 15 **nications, including any video materials from campaign communications.**

16 (ii) An expenditure shall be presumed to be so made when [it] **the expenditure is:**

17 [(i)] (I) **Based on information about the plans, projects or needs of the candidate, or of the pol-**
 18 **itical committee supporting or opposing a measure, and provided to the expending person by the**
 19 **candidate or by the candidate's agent, or by any political committee or agent of a political com-**
 20 **mittee supporting or opposing a measure, with a view toward having an expenditure made; or**

21 [(ii)] (II) **Made by or through any person who is or has been authorized to raise or expend funds,**
 22 **who is or has been an officer of a political committee authorized by the candidate or by a political**
 23 **committee or agent of a political committee supporting or opposing a measure, or who is or has been**
 24 **receiving any form of compensation or reimbursement from the candidate, the candidate's principal**
 25 **campaign committee or agent or from any political committee or agent of a political committee**
 26 **supporting or opposing a measure.**

27 (B) **Does not mean providing to the expending person upon request a copy of this chapter or any**
 28 **rules adopted by the Secretary of State relating to independent expenditures.**

29 (11) **"Initiative petition" means a petition to initiate a measure for which a prospective petition**
 30 **has been filed but that is not yet a measure.**

31 (12) **"Judge" means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon**
 32 **Tax Court.**

33 (13) **"Mass mailing" means more than 200 substantially similar pieces of mail, but does not in-**
 34 **clude a form letter or other mail that is sent in response to an unsolicited request, letter or other**
 35 **inquiry.**

36 (14) **"Measure" includes any of the following submitted to the people for their approval or re-**
 37 **jection at an election:**

38 (a) **A proposed law.**

39 (b) **An Act or part of an Act of the Legislative Assembly.**

40 (c) **A revision of or amendment to the Oregon Constitution.**

41 (d) **Local, special or municipal legislation.**

42 (e) **A proposition or question.**

43 (15) **"Occupation" means:**

44 (a) **The nature of an individual's principal business; and**

45 (b) **If the individual is employed by another person, the business name and address, by city and**

1 state, of the employer.

2 (16) "Person" means an individual, corporation, limited liability company, labor organization,
3 association, firm, partnership, joint stock company, club, organization or other combination of indi-
4 viduals having collective capacity.

5 (17) "Petition committee" means an initiative, referendum or recall petition committee organized
6 under ORS 260.118.

7 (18) "Political committee" means a combination of two or more individuals, or a person other
8 than an individual, that has:

9 (a) Received a contribution for the purpose of supporting or opposing a candidate, measure or
10 political party; or

11 (b) Made an expenditure for the purpose of supporting or opposing a candidate, measure or
12 political party. For purposes of this paragraph, an expenditure does not include:

13 (A) A contribution to a candidate or political committee that is required to report the contri-
14 bution on a statement filed under ORS 260.057 or 260.076 or a certificate filed under ORS 260.112;
15 or

16 (B) An independent expenditure for which a statement is required to be filed by a person under
17 ORS 260.044.

18 (19) "Public office" means any national, state, county, district, city office or position, except a
19 political party office, that is filled by the electors.

20 (20) "Recall petition" means a petition to recall a public officer for which a prospective petition
21 has been filed but that is not yet a measure.

22 (21) "Referendum petition" means a petition to refer a measure for which a prospective petition
23 has been filed but that is not yet a measure.

24 (22) "Regular district election" means the regular district election described in ORS 255.335.

25 (23) "State office" means the office of Governor, Secretary of State, State Treasurer, Attorney
26 General, Commissioner of the Bureau of Labor and Industries, state Senator, state Representative,
27 judge or district attorney.

28 **SECTION 2.** ORS 260.044, as amended by section 2, chapter 70, Oregon Laws 2018, is amended
29 to read:

30 260.044. (1) If a person makes independent expenditures in a total amount of more than [~~\$750~~]
31 **\$250** in a calendar year, the person shall use the electronic filing system adopted under ORS 260.057
32 to file with the Secretary of State a statement of independent expenditures not later than seven
33 calendar days after the total amount of independent expenditures exceeds [~~\$750~~] **\$250** in a calendar
34 year.

35 (2) A person who files a statement of independent expenditures under subsection (1) of this
36 section shall use the electronic filing system adopted under ORS 260.057 to file with the secretary
37 additional statements of independent expenditures made by the person, as described in ORS 260.083.

38 (3) Except as provided in [~~subsections~~] **subsection** (4) [~~and~~ (5)] of this section, a person shall file
39 a statement described in subsection (2) of this section not later than [~~30~~] **seven** calendar days after
40 an independent expenditure is made.

41 [(4)(a) A person shall file a statement described in subsection (2) of this section not later than seven
42 calendar days after an independent expenditure is made. This paragraph applies to independent
43 expenditures made:]

44 [(A) During the period beginning on the 42nd calendar day before the date of any primary election
45 and ending on the date of the primary election; and]

1 *[(B) During the period beginning on the 42nd calendar day before the date of any general election*
 2 *and ending on the date of the general election.]*

3 *[(b) If the person makes an independent expenditure prior to the 42nd calendar day before the date*
 4 *of the primary or general election and the person has not filed a statement under subsection (3) of this*
 5 *section by the 43rd calendar day before the date of the primary or general election, the person shall file*
 6 *a statement described in subsection (2) of this section not later than whichever of the following dates*
 7 *occurs first:]*

8 *[(A) The date required under subsection (3) of this section; or]*

9 *[(B) The 35th calendar day before the date of the primary or general election.]*

10 [(5)] (4) For any special election, the secretary by rule may establish a period during which a
 11 person must file a statement described in subsection (2) of this section. The period may not extend
 12 beyond seven calendar days after an independent expenditure is made.

13 [(6)] (5) Notwithstanding ORS 260.005 (18), a person who solicits and receives a contribution or
 14 contributions is a political committee and shall file a statement of organization under ORS 260.042
 15 and the statements required by ORS 260.057, 260.076 or 260.078.

16 [(7)] (6) For purposes of this section:

17 (a) An independent expenditure does not include a contribution to a candidate or political
 18 committee that is required to report the contribution on a statement filed under ORS 260.057,
 19 260.076 or 260.078 or a certificate filed under ORS 260.112;

20 (b) An independent expenditure does not include a contribution to a candidate who is not re-
 21 quired to file a statement of organization under ORS 260.043; and

22 (c) A person is not a political committee under subsection [(6)] (5) of this section if all contri-
 23 butions received by the person are:

24 (A) Designated to an identified candidate or political committee;

25 (B) Delivered by the person to the designated candidate or political committee not later than
 26 seven business days after the contribution is received; and

27 (C) Required to be reported as contributions by a candidate or political committee on a state-
 28 ment filed under ORS 260.057, 260.076 or 260.078 or a certificate filed under ORS 260.112.

29 **SECTION 3.** ORS 260.232 is amended to read:

30 260.232. (1) The Secretary of State may impose a civil penalty as provided in this section, in
 31 addition to any other penalty that may be imposed, for:

32 (a) Failure to file a statement or certificate required to be filed under ORS 260.044, 260.057,
 33 260.076, 260.078, 260.083, 260.112 or 260.118.

34 (b) Failure to include in a statement filed under ORS 260.044, 260.057, 260.076, 260.078, 260.083,
 35 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076, 260.083 or 260.118.

36 (c) **Incorrectly identifying as an independent expenditure an expenditure that was made**
 37 **with the cooperation or with the prior consent of, or in consultation with, or at the request**
 38 **or suggestion of, a candidate or any agent or authorized committee of the candidate, or any**
 39 **political committee or agent of a political committee supporting or opposing a measure.**

40 (2)(a) If a person required to file has not filed [a] **an accurate** statement or certificate comply-
 41 ing with applicable provisions of ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.085, 260.112 or
 42 260.118 within the time specified in ORS 260.044, 260.057, 260.076, 260.078 or 260.118, the Secretary
 43 of State by first class mail or electronically shall notify the person or elector designated under ORS
 44 260.042 or 260.118 that a penalty may be imposed and that the person has 20 days from the service
 45 date on the notice to request a hearing before the Secretary of State.

1 (b) If the person required to file is a candidate or the principal campaign committee of a can-
 2 didate, the Secretary of State shall send the notice described in paragraph (a) of this subsection by
 3 first class mail or electronically to the candidate. The notice shall be used for purposes of deter-
 4 mining the deadline for requesting a hearing under subsection (3) of this section.

5 (3) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation
 6 shall be held by the Secretary of State:

7 (a) Upon request of the person against whom the penalty may be assessed, if the request is made
 8 not later than the 20th day from the service date on the notice sent under subsection (2) of this
 9 section;

10 (b) Upon request of the filing officer with whom a statement or certificate was required to be
 11 filed but was not filed; or

12 (c) Upon the Secretary of State's own motion.

13 (4) A hearing under subsection (3) of this section shall be held not later than 45 days after the
 14 deadline for the person against whom the penalty may be assessed to request a hearing. However,
 15 if requested by the person against whom the penalty may be assessed, a hearing under subsection
 16 (3) of this section shall be held not later than 60 days after the deadline for the person against whom
 17 the penalty may be assessed to request a hearing.

18 (5) The Secretary of State shall issue an order not later than 90 days after a hearing or after
 19 the deadline for requesting a hearing if no hearing is held.

20 (6) The person against whom a penalty may be assessed need not appear in person at a hearing
 21 held under this section, but instead may submit written testimony and other evidence, subject to the
 22 penalty for false swearing, to the Secretary of State for entry in the hearing record. The testimony
 23 and other evidence must be received by the secretary not later than three business days before the
 24 day of the hearing and may be submitted electronically.

25 (7) A civil penalty imposed under this section may not be more than the following:

26 (a) For failure to file a statement or certificate required to be filed under ORS 260.044, 260.057,
 27 260.076, 260.078, 260.083, 260.112 or 260.118[.]:

28 **(A) [10] 20 percent of the total amount of the contribution or expenditure required to be in-**
 29 **cluded in the statement or certificate, if the total amount of the contribution or expenditure**
 30 **required to be included in the statement or certificate is less than \$1,000; or**

31 **(B) 40 percent of the total amount of the contribution or expenditure required to be in-**
 32 **cluded in the statement or certificate, if the total amount of the contribution or expenditure**
 33 **required to be included in the statement or certificate is \$1,000 or more;**

34 (b) For each failure to include in a statement filed under ORS 260.044, 260.057, 260.076, 260.078,
 35 260.083, 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076, 260.083 or
 36 260.118[.]:

37 **(A) [10] 20 percent of the total amount of the contribution or expenditure required to be in-**
 38 **cluded in the statement, if the total amount of the contribution or expenditure required to be**
 39 **included in the statement is less than \$1,000[.]; or**

40 **(B) 40 percent of the total amount of the contribution or expenditure required to be in-**
 41 **cluded in the statement, if the total amount of the contribution or expenditure required to**
 42 **be included in the statement is \$1,000 or more;**

43 **(c) For each instance of incorrectly identifying as an independent expenditure an ex-**
 44 **penditure that was made with the cooperation or with the prior consent of, or in consultation**
 45 **with, or at the request or suggestion of, a candidate or any agent or authorized committee**

1 of the candidate, or any political committee or agent of a political committee supporting or
 2 opposing a measure:

3 (A) 20 percent of the incorrectly identified expenditure, if the incorrectly identified ex-
 4 penditure is less than \$1,000; or

5 (B) 40 percent of the incorrectly identified expenditure, if the incorrectly identified ex-
 6 penditure is \$1,000 or more; or

7 (d) For each failure to timely file an accurate statement for an in-kind contribution made
 8 to a candidate, political committee or petition committee:

9 (A) 20 percent of the total amount of the contribution, if the contribution is less than
 10 \$1,000; or

11 (B) 40 percent of the total amount of the contribution, if the contribution is \$1,000 or
 12 more.

13 (8) The Secretary of State, upon a showing of mitigating circumstances, may reduce the amount
 14 of *[the]* a civil penalty described in subsection (7) of this section.

15 (9) Except as otherwise provided by this section, civil penalties under this section shall be im-
 16 posed as provided in ORS 183.745.

17 **SECTION 4.** ORS 260.055 is amended to read:

18 260.055. (1) Each candidate, other than a candidate for political party office, the treasurer of
 19 each political committee, *[and]* the treasurer of each petition committee **and each person that**
 20 **makes independent expenditures in a total amount of more than \$250 in a calendar year** shall
 21 keep detailed accounts. The accounts shall be current as of not later than the seventh business day
 22 after the date of receiving a contribution or making an expenditure **or independent expenditure**
 23 with respect to all contributions received and all expenditures **or independent expenditures** made
 24 by or on behalf of the candidate or committee that are required to be reported under ORS **260.044,**
 25 **260.057, 260.076 or 260.078.** Subject to ORS 260.085, the accounts shall list all information required
 26 to be reported under ORS 260.083.

27 (2) Accounts kept by a candidate *[or the]*, a treasurer of a political committee **or a person that**
 28 **makes independent expenditures in a total amount of more than \$250 in a calendar year** may
 29 be inspected under reasonable circumstances at any time before the election to which the accounts
 30 refer or during the period specified for retention of the accounts under subsection (3) of this section
 31 by any opposing candidate or the treasurer of any political committee for the same electoral contest.
 32 The right of inspection may be enforced by writ of mandamus issued by any court of competent ju-
 33 risdiction. The treasurers of political committees supporting a candidate may be joined with the
 34 candidate as defendants in a mandamus proceeding.

35 (3) Accounts kept by a candidate *[or treasurer]*, **a treasurer of a political committee or a**
 36 **person that makes independent expenditures in a total amount of more than \$250 in a cal-**
 37 **endar year** shall be preserved by the candidate, *[or]* treasurer **or person** for at least two years
 38 after the date the statement of the contribution or expenditure is filed under ORS 260.057 **or the**
 39 **independent expenditure is made.**

40 **SECTION 5.** The amendments to ORS 260.005, 260.044, 260.055 and 260.232 by sections 1
 41 to 4 of this 2019 Act apply to independent expenditures made on or after the effective date
 42 of this 2019 Act.