

Proposed Amendments to
House Bill 2680

Requested by Representative RAYFIELD

3/19/21 (DRG)

LC 2511

On page 1 of the printed bill, line 2, after <<ORS>> delete the rest of the line.
Delete line 3 and insert <<260.005, 260.266, 260.995, 305.754 and 305.796;
repealing chapter 3, Oregon Laws 2007; and prescribing an effective date.>>.

**<<SECTION 1. Section 2, 3 and 4 of this 2021 Act are added to and made a part of
ORS chapter 260.**

<<SECTION 2. (1) As used in this section:

**<<(a) <Election cycle> means the period starting on the day after the date of a
general election and ending on the date of the next general election.**

**<<(b) <Local provision> means a charter provision, ordinance, resolution or
other provision adopted by a city, county or other local government.**

**<<(c) <State office,> notwithstanding ORS 260.005, means the office of
Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the
Bureau of Labor and Industries, state Senator, state Representative, judge of the
Supreme Court, judge of the Court of Appeals or circuit court judge.**

**<<(2) A political committee other than the principal campaign committee of a
candidate may accept unlimited contributions.**

**<<(3)(a) A candidate for state office or the principal campaign committee of a
candidate for state office may accept contributions only from the sources and in the
amounts described in this section.**

**<<(b) Except as otherwise provided by a local provision, the limits on aggregate
contributions that may be accepted by a candidate or the principal campaign
committee of a candidate for the office of state Representative, state Senator or circuit
court judge under this section also apply to a candidate or the principal campaign
committee of a candidate for any elected office that is not a state office.**

**<<(4)(a) A candidate or the principal campaign committee of a candidate for
the office of state Representative, state Senator or circuit court judge may not accept
aggregate contributions in excess of \$5,000 per election from a person or political
committee, including the principal campaign committee of a candidate.**

**<<(b) A candidate or the principal campaign committee of a candidate for a
state office not described in paragraph (a) of this subsection may not accept aggregate
contributions in excess of \$10,000 per election from a person or political committee,
including the principal campaign committee of a candidate.**

**<<(5) A political committee may make a contribution to a candidate for state
office or the principal campaign committee of a candidate for state office only if the
political committee is registered with the Secretary of State as a political committee.**

**<<(6) Nothing in this section limits the amount a candidate may contribute
from the candidate's personal funds to the candidate or the principal campaign
committee of the candidate.**

**<<(7)(a) For purposes of this section, a separate election exists in each instance
in which an individual:**

**<<(A) Is a candidate for nomination to a state office by a major political party or
a minor political party;**

<<(B) Is a candidate for nomination to a state office by an assembly of electors

under ORS 249.735 or by individual electors under ORS 249.740;

<<(C) Is a candidate for nomination to a nonpartisan state office;

<<(D) Will appear on a general election ballot or a special election ballot as a candidate for state office;

<<(E) Is a write-in candidate for state office at a primary election, general election or special election who has established a principal campaign committee; or

<<(F) Will appear on a recall election ballot as the incumbent holder of a state office.

<<(b) Notwithstanding subsection (2) of this section, during each election cycle:

<<(A) A candidate or the principal campaign committee of a candidate for state office who has not qualified to appear on the general election ballot may accept contributions for only one election plus any additional elections in which the candidate meets the requirements described in paragraph (a)(F) of this subsection;

<<(B) A candidate or the principal campaign committee of a candidate for state office who will appear on the general election ballot may accept contributions for only two elections plus any additional elections in which the candidate meets the requirements described in paragraph (a)(F) of this subsection; and

<<(C) An individual may not accept contributions for more than two elections in which the individual is a candidate for nomination or election to a particular state office.

<<(8)(a) For purposes of the contribution limits established in this section, contributions made or received by multiple political committees are considered to be made or received by a single political committee if the political committees are established, financed, maintained or controlled by the same person or substantially the same group of persons, including any parent, subsidiary, branch, division, department or local unit of the person or group of persons.

<<(b) Notwithstanding paragraph (a) of this subsection, having the same individual acting as the treasurer of two or more political committees is not by itself sufficient to consider contributions made by the political committees to be contributions made or received by a single political committee.

<<(9) For purposes of the contribution limits established in this section, contributions made by multiple people other than individuals are considered to be made or received by a single person if the people other than individuals are established, financed, maintained or controlled by the same person or substantially the same group of persons, including any parent, subsidiary, branch, division, department or local unit of the person or group of persons.

<<(10) Prior to the start of each election cycle, the Secretary of State shall adjust the dollar amounts set forth in this section by the cumulative change in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor, since the previous election cycle. The adjustments performed under this subsection shall be rounded to the nearest \$10 increment.

<<(11) The Secretary of State may adopt rules necessary to implement this section.

<<SECTION 3. (1) A foreign national may not make, directly or indirectly, or offer to make:

<<(a) A contribution or expenditure for a candidate, political committee or petition committee.

<<(b) A contribution or expenditure for the purpose of influencing the outcome of:

<<(A) A nomination for or election to a state or local public office;

<<(B) An election on a measure; or

<<(C) An initiative, referendum or recall petition.

<<(c) A contribution or expenditure for the purpose of paying for all or part of a communication in support of or in opposition to a clearly identified candidate or

measure.

<<(2) A candidate, political committee or petition committee may not solicit, accept or receive, directly or indirectly, a contribution or expenditure from a foreign national.

<<(3) A person may not solicit, accept or receive, directly or indirectly, a contribution or expenditure from a foreign national that is made for the purpose of:

<<(a) Influencing the outcome of:

<<(A) A nomination for or election to a state or local public office;

<<(B) An election on a measure; or

<<(C) An initiative, referendum or recall petition.

<<(b) Paying for all or part of a communication in support of or in opposition to a clearly identified candidate or measure.

<<(4) A person may not knowingly or recklessly provide substantial assistance to a person in violating subsections (1) to (3) of this section.

<<(5) As used in this section:

<<(a) <Communication in support of or in opposition to a clearly identified candidate or measure> has the meaning given that term in ORS 260.005 (10)(c).

<<(b) <Foreign national> means:

<<(A) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence in the United States;

<<(B) A government, or subdivision, of a foreign country;

<<(C) A foreign political party;

<<(D) A partnership, association, corporation, organization or other combination of persons organized under the laws of or that has its principal place of business in a foreign country;

<<(E) A partnership, association, corporation, organization or other combination of persons organized under the laws of or that has its principal place of business in the United States, that is foreign owned or controlled; or

<<(F) An organization exempt from taxation under section 501(c) of the Internal Revenue Code for which the amount of aggregate contributions received by the organization from foreign nationals is equal to 20 percent or more of the organization's gross receipts received in the most recent taxable year or 20 percent or more of the organization's aggregate gross receipts received within the last five years.

<<(c) <Foreign owned or controlled> means a partnership, association, corporation, organization or other combination of persons for which:

<<(A) One or more foreign nationals or foreign owners hold, own or control, directly or indirectly, beneficial ownership of equity or voting shares in an aggregate amount equal to or greater than 20 percent of total equity or voting shares, but not including any ownership or equity interest owned through a United States widely held, diversified fund;

<<(B) If it is an organization exempt from taxation under section 501(c) of the Internal Revenue Code, the amount of aggregate contributions received by the organization from foreign nationals is equal to 20 percent or more of the organization's gross receipts received in the most recent taxable year or 20 percent or more of the organization's aggregate gross receipts received within the last five years; or

<<(C) A foreign national participates in any manner in the decision-making process of the partnership, association, corporation, organization or other combination of persons regarding any contribution or expenditure by the partnership, association, corporation, organization or other combination of persons that a foreign national is prohibited from making under subsection (1) of this section.

<<(d) <Foreign owner> means a person for which a foreign national holds, owns or control, directly or indirectly, beneficial ownership of equity or voting shares in an amount equal to or greater than 50 percent of total equity or outstanding voting shares, but not including any ownership or equity interest owned through a United

States widely held, diversified fund.

<<(e) <Widely held, diversified fund> means an investment fund, including but not limited to a mutual fund, common trust fund of a financial institution, pension or deferred compensation plan or pooled investment fund of a limited partnership, that:

<<(A) Has at least 100 persons as direct or indirect investors;

<<(B) Holds no more than 5 percent of the value of its portfolio in the securities of an issuer, except the obligations of the United States government, including those of its agencies and instrumentalities, or bonds of a single state, including its subdivisions, within the United States;

<<(C) Holds no more than 20 percent of its portfolio in any particular economic or geographic sector; and

<<(D) Is independently managed in a manner where no investor or investor's immediate family member has an ability to exercise control over the financial interests held by the investment fund.

<<SECTION 4. (1) The operator of a media outlet or Internet platform who provides or sells advertising space or time shall establish policies, procedures and controls to identify and prevent the distribution of a communication made by a foreign national in violation of section 3 of this 2021 Act.

<<(2) If the operator of an Internet platform discovers a communication has been made on the operator's Internet platform by a foreign national in violation of section 3 of this 2021 Act, the operator shall immediately remove the communication from the operator's Internet platform and report the communication as a violation in the manner provided in ORS 260.345.

<<(3) As used in this section:

<<(a) <Foreign national> has the meaning given that term in section 3 of this 2021 Act.

<<(b) <Internet platform> means a digital service that facilitates interactions between two or more distinct but interdependent sets of users who interact through the service via the Internet.

<<(c) <Media outlet> means a radio or television station that distributes programming by broadcast, cable, satellite or other means.

<<SECTION 5. ORS 260.995, as amended by section 3, chapter 636, Oregon Laws 2019, is amended to read:

<<260.995. (1) Except as provided in subsection (2) or (3) of this section, following an investigation under ORS 260.345, the Secretary of State or Attorney General may impose a civil penalty not to exceed \$1,000 for each violation of any provision of Oregon Revised Statutes relating to the conduct of any election, any rule adopted by the secretary under ORS chapters 246 to 260 or any other matter preliminary to or relating to an election, for which a civil penalty is not otherwise provided.

<<(2) The secretary or the Attorney General may impose a civil penalty not to exceed:

<<(a)(A) Except as provided in subparagraph (B) of this paragraph, \$1,000 plus the amount converted to personal use for each violation of ORS 260.407; or

<<(B) Two times the amount of the penalty provision for violating a nondisclosure agreement that is contained within each nondisclosure agreement entered into in violation of ORS 260.407 or 260.413;

<<(b) 150 percent of the total cost of printing, transmitting or distributing a communication in support of or in opposition to a clearly identified candidate if the disclosure requirements set forth in ORS 260.266 are not met; or

<<(c) \$10,000 for each violation of ORS 260.555, 260.558, 260.575, 260.695 (1) or 260.715 (1) or section 1b, Article IV of the Oregon Constitution.

<<(3)(a) Except as provided in paragraph (b) of this subsection, for each instance in which a candidate for state office or the principal campaign committee of a candidate for state office accepts a contribution in excess of the limits established in section 2 of this 2021 Act, the secretary or Attorney General:

<<(A) Shall require the candidate or committee to return all moneys accepted

in excess of the applicable contribution limit to the person that made the nonconforming contribution; and

<<(B) May impose a civil penalty in the form of a fine not to exceed 150 percent of the total amount of the contribution accepted that resulted in a violation of the contribution limits established in section 2 of this 2021 Act.

<<(b)(A) The secretary or Attorney General may not impose a civil penalty on a candidate for state office or the principal campaign committee of a candidate for state office for receiving contributions in excess of the contribution limits established in section 2 of this 2021 Act if, within 10 business days of receiving the nonconforming contribution, the candidate or committee:

<<(i) Refuses to accept and returns the contribution; or

<<(ii) Returns all moneys included in the contribution that are in excess of the contribution limits established in section 2 of this 2021 Act.

<<(B) If a candidate for state office or the principal campaign committee of a candidate for state office is unable to return all or part of a nonconforming contribution to the person that made the contribution, the return of all or part of a contribution under this paragraph may be satisfied by donating the moneys described in subparagraph (A) of this paragraph to an organization recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.

<<[(3)] (4) Except as otherwise provided by this section, civil penalties under this section shall be imposed as provided in ORS 183.745. In addition to the requirements of ORS 183.745, the notice shall include:

<<(a) A statement of the authority and jurisdiction under which the hearing is to be held; and

<<(b) If the person is an agency, corporation or an unincorporated association, a statement that such person must be represented by an attorney licensed in Oregon, unless the person is a political committee which may be represented by any officer identified in the most recent statement of organization filed with the filing officer.

<<[(4)] (5) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation shall be held by the secretary or Attorney General:

<<(a) Upon request of the person against whom the penalty may be assessed, if the request is made not later than the 20th day after the date the person received notice sent under subsection [(3)] (4) of this section; or

<<(b) Upon the secretary's or Attorney General's own motion.

<<[(5)] (6) The person against whom a penalty may be assessed need not appear in person at a hearing held under this section, but instead may submit written testimony or other evidence, sworn to before a notary public, to the secretary or Attorney General for entry in the hearing record. The testimony or other evidence must be received by the secretary or Attorney General not later than three business days before the day of the hearing.

<<[(6)] (7) All hearings under this section shall be held not later than 45 days after the deadline for the person against whom the penalty may be assessed to request a hearing. However, if requested by the person against whom the penalty may be assessed, a hearing under subsection [(4)] (5) of this section shall be held not later than 60 days after the deadline for the person against whom the penalty may be assessed to request a hearing.

<<[(7)] (8) The secretary or Attorney General shall issue an order not later than 90 days after a hearing or after the deadline for requesting a hearing if no hearing is held.

<<[(8)] (9) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund.

<<[(9)] (10) In the case of a civil penalty imposed under this section for a violation of ORS 260.407, the person against whom the penalty is assessed:

<<(a) Is personally responsible for the payment of the civil penalty;

<<(b) Shall pay the civil penalty from personal funds of the person; and

<<(c) May not pay the civil penalty from contributions received by a candidate, a candidate's principal campaign committee, a political committee or a petition committee.

<<**SECTION 6.** ORS 260.005 is amended to read:

<<260.005. As used in this chapter:

<<(1)(a) <Candidate> means:

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

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

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

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

<<(2) <Committee director> means any person who directly and substantially participates in decision-making on behalf of a political committee concerning the solicitation or expenditure of funds and the support of or opposition to candidates or measures. The officers of a political party shall be considered the directors of any political party committee of that party, unless otherwise provided in the party's bylaws.

<<(3) Except as provided in ORS 260.007, <contribute> or <contribution> includes:

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

<<(A) For the purpose of influencing an election for public office or an election on a measure, or of reducing the debt of a candidate for nomination or election to public office or the debt of a political committee; or

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

<<(b) The excess value of a contribution made for compensation or consideration of less than equivalent value[.]; **and**

<<(c) An expenditure by a person for a communication in support of or in opposition to a clearly identified candidate or measure that is made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any political committee or agent of a political committee supporting or opposing a measure.

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

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

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

<<(5) <Controlled directly or indirectly by a candidate> means:

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

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

<<(6) <County clerk> means the county clerk or the county official in charge of elections.

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

<<(8) Except as provided in ORS 260.007, <expend> or <expenditure> includes the payment or furnishing of money or anything of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including support of or opposition to a candidate, political committee or measure, or for reducing the debt of a candidate for nomination or election to public office. <Expenditure> also includes contributions made by a candidate or political committee to or on behalf of any other candidate or political committee.

<<(9) <Filing officer> means:

<<(a) The Secretary of State:

<<(A) Regarding a candidate for public office;

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

<<(C) Regarding any measure; or

<<(D) Regarding any political committee.

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

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

<<(B) The county clerk of the county in which the office of the secretary of the proposed irrigation district will be located, regarding any candidate for office or any measure at an irrigation district formation election where the proposed district is situated in more than one county; or

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

<<(10) <Independent expenditure> means an expenditure by a person for a communication in support of or in opposition to a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any political committee or agent of a political committee supporting or opposing a measure. For purposes of this subsection **and subsection (3) of this section:**

<<(a) <Agent> means any person who has:

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

<<(B) Been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities the person may authorize expenditures.

<<(b)(A) <Clearly identified> means, with respect to candidates:

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

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

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

<<(B) <Clearly identified> means, with respect to measures:

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

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

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

<<(c) <Communication in support of or in opposition to a clearly identified candidate or measure> means:

<<(A)(i) The communication, when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy for the election or defeat of a clearly identified candidate for nomination or election to public office, or the passage or defeat of a clearly identified measure; and

<<(ii) The electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning; or

<<(B)(i) The communication involves aggregate expenditures of more than \$250 by a person;

<<(ii) The communication refers to a clearly identified candidate or measure that will appear on the ballot or to a political party; and

<<(iii) The communication is published and disseminated to the relevant electorate within 60 calendar days before a primary election, 120 calendar days before a general election or 90 calendar days before an election other than a primary election or a general election.

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

<<(A) Means any arrangement, coordination or direction by the candidate or the candidate's agent, or by any political committee or agent of a political committee supporting or opposing a measure, prior to the publication, distribution, display or broadcast of the communication. An expenditure shall be presumed to be so made when it is:

<<(i) Based on information about the plans, projects or needs of the candidate, or of the political committee supporting or opposing a measure, and provided to the expending person by the candidate or by the candidate's agent, or by any political committee or agent of a political committee supporting or opposing a measure, with a view toward having an expenditure made; or

<<(ii) Made by or through any person who is or has been authorized to raise or expend funds, who is or has been an officer of a political committee authorized by the candidate or by a political committee or agent of a political committee supporting or opposing a measure, or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's principal campaign committee or agent or from any political committee or agent of a political committee supporting or opposing a measure.

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

<<(11) <Initiative petition> means a petition to initiate a measure for which a prospective petition has been filed but that is not yet a measure.

<<(12) <Judge> means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon Tax Court.

<<(13) <Mass mailing> means more than 200 substantially similar pieces of mail, but does not include a form letter or other mail that is sent in response to an unsolicited request, letter or other inquiry.

<<(14) <Measure> includes any of the following submitted to the people for their approval or rejection at an election:

<<(a) A proposed law.

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

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

<<(d) Local, special or municipal legislation.

<<(e) A proposition or question.

<<(15) <Occupation> means:

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

<<(b) If the individual is employed by another person, the business name and address, by city and state, of the employer.

<<(16) <Person> means an individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity.

<<(17) <Petition committee> means an initiative, referendum or recall petition committee organized under ORS 260.118.

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

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

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

<<(A) A contribution to a candidate or political committee that is required to report the contribution on a statement filed under ORS 260.057 or 260.076 or a certificate filed under ORS 260.112; or

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

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

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

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

<<(22) <Regular district election> means the regular district election described in ORS 255.335.

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

<<SECTION 7. Chapter 3, Oregon Laws 2007, is repealed.

<<SECTION 8. It is the intent of the Legislative Assembly that all parts of this 2021 Act are independent and that if any part of this 2021 Act is held unconstitutional, all remaining parts shall remain in force.

<<SECTION 9. Sections 2, 3 and 4 of this 2021 Act and the amendments to ORS 260.005 and 260.995 by sections 5 and 6 of this 2021 Act become operative on November 9, 2022.

<<SECTION 9. The Secretary of State may take any action before the operative date specified in section 8 of this 2021 Act that is necessary for the Secretary of State to exercise, on and after the operative date specified in section 9 of this 2021 Act, all of the duties, functions and powers conferred on the Secretary of State by sections 2, 3 and 4 of this 2021 Act and the amendments to ORS 260.005 and 260.995 by section 5 and 6 of this 2021 Act.>>.