

# House Bill 2222

Sponsored by Representative WILDE (Presession 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**.

Modifies definition of "meeting" for purposes of public meetings law to state that meeting may occur without regard to location or stated purpose for which members of governing body convene. Excludes one-on-one meetings of two members of governing body from definition of "meeting," even if serial one-on-one meetings take place between members of governing body.

Establishes affirmative duty of chief administrative officer of public body or employee of public body who routinely and customarily advises governing body on public meetings law requirements to advise governing body on whether meeting content qualifies for executive session. Establishes joint and several liability for specified public body officers and employees who, with willful misconduct, fail or incorrectly advise governing body of meeting content's eligibility for executive session.

Authorizes Oregon Government Ethics Commission to adopt rules establishing criteria for when official or employee of public body has affirmative duty to advise on meeting content qualification for executive session. Authorizes commission to impose civil penalties on members of governing body or specified officers or employees of public body for conducting executive sessions in which meeting content does not meet executive session requirements.

## A BILL FOR AN ACT

1  
2 Relating to public meetings; amending ORS 192.610, 192.660, 192.680, 244.290 and 244.350.

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

4 **SECTION 1.** ORS 192.610 is amended to read:

5 192.610. As used in ORS 192.610 to 192.690:

6 (1) "Decision" means any determination, action, vote or final disposition upon a motion, pro-  
7 posal, resolution, order, ordinance or measure on which a vote of a governing body is required, at  
8 any meeting at which a quorum is present.

9 (2) "Executive session" means any meeting or part of a meeting of a governing body which is  
10 closed to certain persons for deliberation on certain matters.

11 (3) "Governing body" means the members of any public body which consists of two or more  
12 members, with the authority to make decisions for or recommendations to a public body on policy  
13 or administration.

14 (4) "Public body" means the state, any regional council, county, city or district, or any municipal  
15 or public corporation, or any board, department, commission, council, bureau, committee or sub-  
16 committee or advisory group or any other agency thereof.

17 (5) "Meeting" :

18 (a) Means the convening of a governing body of a public body for which a quorum is required  
19 in order to make a decision or to deliberate toward a decision on any matter, **without regard to**  
20 **the location at which, or the stated purpose for which, the governing body convenes.** [*Meet-*  
21 *ing*] ]

22 (b) Does not include:

23 (A) Any on-site inspection of any project or program[.];

24 (B) [*Meeting* also does not include] The attendance of members of a governing body at any

**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 national, regional or state association to which the public body or the members belong[.]; or

2 **(C) One-on-one meetings between two members of a governing body, even if two members**  
 3 **of a governing body constitute a quorum of the governing body or if serial one-on-one**  
 4 **meetings take place between members of the governing body, during which discussions about**  
 5 **one or more pending decisions of the governing body occur.**

6 **SECTION 2.** ORS 192.660 is amended to read:

7 192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from  
 8 holding executive session during a regular, special or emergency meeting, after the presiding officer  
 9 has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

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

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

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

15 (c) To consider matters pertaining to the function of the medical staff of a public hospital li-  
 16 censed pursuant to ORS 441.015 to 441.087 including, but not limited to, all clinical committees,  
 17 executive, credentials, utilization review, peer review committees and all other matters relating to  
 18 medical competency in the hospital.

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

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

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

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

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

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

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

32 (k) To consider matters relating to school safety or a plan that responds to safety threats made  
 33 toward a school.

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

36 (m) If the governing body is the State Landscape Architect Board, or an advisory committee to  
 37 the board, to consider information obtained as part of an investigation of registrant or applicant  
 38 conduct.

39 (n) To discuss information about review or approval of programs relating to the security of any  
 40 of the following:

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

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

44 (C) Generation, storage or conveyance of:

45 (i) Electricity;

- 1 (ii) Gas in liquefied or gaseous form;
- 2 (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- 3 (iv) Petroleum products;
- 4 (v) Sewage; or
- 5 (vi) Water.

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

7 (E) Data transmissions by whatever means provided.

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

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

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

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

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

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

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

25 (c) The consideration of general employment policies.

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

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

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

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

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

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

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

40 (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to  
41 the substance and disposition of licensee or applicant conduct investigated by a health professional  
42 regulatory board.

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

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

4 **(11) The chief administrative officer of a public body or any other employee of a public**  
 5 **body who routinely and customarily advises the governing body on the requirements of ORS**  
 6 **192.610 to 192.690 has an affirmative duty to advise a governing body on whether meeting**  
 7 **content qualifies for an executive session under this section.**

8 **SECTION 3.** ORS 192.680 is amended to read:

9 192.680. (1) A decision made by a governing body of a public body in violation of ORS 192.610  
 10 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public  
 11 body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is  
 12 reinstated is effective from the date of its initial adoption.

13 (2) Any person affected by a decision of a governing body of a public body may commence a suit  
 14 in the circuit court for the county in which the governing body ordinarily meets, for the purpose  
 15 of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members  
 16 of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or  
 17 decisions of the governing body.

18 (3) Notwithstanding subsection (1) of this section, if the court finds that the public body made  
 19 a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the  
 20 governing body if the court finds that the violation was the result of intentional disregard of the law  
 21 or willful misconduct by a quorum of the members of the governing body, unless other equitable  
 22 relief is available. The court may order such equitable relief as it deems appropriate in the cir-  
 23 cumstances. The court may order payment to a successful plaintiff in a suit brought under this  
 24 section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of  
 25 which it is a part or to which it reports.

26 (4)(a) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under  
 27 subsection (2) of this section and that the violation is the result of willful misconduct by any member  
 28 or members of the governing body, that member or members shall be jointly and severally liable to  
 29 the governing body or the public body of which it is a part for the amount paid by the body under  
 30 subsection (3) of this section.

31 **(b) If the court makes a finding that a violation of ORS 192.660 has occurred under sub-**  
 32 **section (2) of this section and that the violation is the result of willful misconduct of an of-**  
 33 **ficer or employee of the public body who had a duty to advise the governing body of the**  
 34 **public body under ORS 192.660 (11), that officer or employee shall be jointly and severally li-**  
 35 **able to the governing body or the public body of which it is a part for the amount paid by**  
 36 **the body under subsection (3) of this section.**

37 (5) Any suit brought under subsection (2) of this section must be commenced within 60 days  
 38 following the date that the decision becomes public record.

39 (6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS  
 40 192.610 to 192.690.

41 **SECTION 4.** ORS 244.290 is amended to read:

42 244.290. (1) The Oregon Government Ethics Commission shall:

43 (a) Prescribe forms for statements required by this chapter and provide the forms to persons  
 44 required to file the statements under this chapter or pursuant to a resolution adopted under ORS  
 45 244.160.

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

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

4 (d) Accept and file any information voluntarily supplied that exceeds the requirements of this  
5 chapter.

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

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

11 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to  
12 171.785, 171.992, 192.660 and 192.685 and this chapter, including rules to:

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

15 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS  
16 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions  
17 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant  
18 the public disclosure;

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

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

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

25 (f) Describe the application of provisions exempting items from the definition of “gift” in ORS  
26 244.020;

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

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

30 (3) The commission may adopt rules that:

31 (a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes  
32 that qualify under the class exception from the definition of “potential conflict of interest” under  
33 ORS 244.020;

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

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

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

42 **(e) Establish criteria for when an official or employee of a public body has an affirmative**  
43 **duty to advise the governing body of the public body on whether meeting content qualifies**  
44 **for an executive session under ORS 192.660.**

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 available in a searchable format for review by the public using  
 11 the Internet:

12 (a) Statements filed under ORS 244.050 and 244.217;

13 (b) Advisory opinions issued by the commission or the executive director of the commission;

14 (c) Findings issued by the commission under ORS 244.260 in instances where the commission  
 15 determines that there has been a violation of a provision of this chapter or of any rule adopted by  
 16 the commission under this chapter. Nothing in this paragraph requires the commission to make  
 17 publicly available materials that are otherwise exempt from public disclosure or that are required  
 18 to be kept confidential by the commission; and

19 (d) Lobbyist registration statements and revisions and updates to lobbyist registration state-  
 20 ments filed under ORS 171.740. The information required under this paragraph must be available in  
 21 a searchable format for review by the public using the Internet not later than one calendar day after  
 22 the lobbyist files the information with the commission.

23 **SECTION 5.** ORS 244.350 is amended to read:

24 244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-  
 25 ceed:

26 (a) Except as provided in paragraphs (b), (c) and (d) of this subsection, \$5,000 for violation of  
 27 any provision of this chapter or any resolution adopted under ORS 244.160.

28 (b) \$25,000 for violation of ORS 244.045.

29 (c) \$10,000 for willfully violating ORS 244.040.

30 (d) Two times the amount of the penalty provision for violating a nondisclosure agreement that  
 31 is contained within each nondisclosure agreement entered into in violation of ORS 244.049.

32 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil  
 33 penalties not to exceed \$1,000 for violation of any provision of ORS 192.660.

34 (b) A civil penalty may not be imposed under this subsection if the violation occurred as a result  
 35 of the governing body of the public body acting upon the advice of the public body's counsel.

36 (c) **A civil penalty under this section may be imposed on one or more members of the**  
 37 **governing body of the public body or on an officer or employee of the public body described**  
 38 **in ORS 192.660 (11) for conducting an executive session in which meeting content does not**  
 39 **meet executive session requirements.**

40 (3) The commission may impose civil penalties not to exceed \$250 for violation of ORS 293.708.  
 41 A civil penalty imposed under this subsection is in addition to and not in lieu of a civil penalty that  
 42 may be imposed under subsection (1) of this section.

43 (4)(a) The commission may impose civil penalties on a person who fails to file the statement  
 44 required under ORS 244.050 or 244.217. In enforcing this subsection, the commission is not required  
 45 to follow the procedures in ORS 244.260 before finding that a violation of ORS 244.050 or 244.217

1 has occurred.

2 (b) Failure to file the required statement in timely fashion is prima facie evidence of a violation  
3 of ORS 244.050 or 244.217.

4 (c) The commission may impose a civil penalty of \$10 for each of the first 14 days the statement  
5 is late beyond the date set by law, or by the commission under ORS 244.050, and \$50 for each day  
6 thereafter. The maximum penalty that may be imposed under this subsection is \$5,000.

7 (5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing a  
8 civil penalty under this section, the commission may issue a written letter of reprimand, explanation  
9 or education.

10