

# Senate Bill 60

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## 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**.

Extends period for Oregon Government Ethics Commission to complete Preliminary Review Phase of alleged violation of ethics laws from 30 calendar days to 60 calendar days.

## A BILL FOR AN ACT

1  
2 Relating to timeline for evaluating potential government ethics violations; creating new provisions;  
3 and amending ORS 244.260.

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

5 **SECTION 1.** ORS 244.260 is amended to read:

6 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed  
7 written complaint alleging that there has been a violation of any provision of this chapter or of any  
8 rule adopted by the commission under this chapter. The complaint shall state the person's reason  
9 for believing that a violation occurred and include any evidence relating to the alleged violation.

10 (b) If at any time the commission has reason to believe that there has been a violation of a  
11 provision of this chapter or of a rule adopted by the commission under this chapter, the commission  
12 may proceed under this section on its own motion as if the commission had received a complaint.

13 (2)(a) Not later than two business days after receiving a complaint under this section, the com-  
14 mission shall notify the person who is the subject of the complaint.

15 (b) Before approving a motion to proceed under this section without a complaint, the commission  
16 shall provide notice to the person believed to have committed the violation of the time and place  
17 of the hearing at which the motion will be discussed. If the commission decides to proceed on its  
18 own motion, the commission shall give notice to the person not later than two business days after  
19 the motion is approved.

20 (c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of  
21 this subsection. The notice must describe the nature of the alleged violation. The notice must in-  
22 clude copies of all materials submitted with a complaint. If the commission will consider a motion  
23 to proceed without a complaint, the notice must provide copies of all materials that the commission  
24 will consider at the hearing on the motion.

25 (d) Information that the commission considers before approving a motion to proceed on its own  
26 motion under this section and any correspondence regarding the motion or potential violation is  
27 confidential. The executive director of the commission and the commission members and staff may  
28 not make any public comment or publicly disclose any materials relating to the motion pending the  
29 commission's approval to proceed. A person who intentionally violates this paragraph is subject to  
30 a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation

**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 of this paragraph by the executive director or a member of the commission or its staff may file a  
2 petition in a court of competent jurisdiction in the county in which the petitioner resides in order  
3 to enforce the civil penalty provided in this paragraph.

4 (3) After the commission receives a complaint or decides to proceed on its own motion, the  
5 executive director of the commission shall undertake action in the Preliminary Review Phase to  
6 determine whether there is cause to undertake an investigation. If the person who is the subject  
7 of the action is a member of the Legislative Assembly, the executive director shall determine  
8 whether the alleged violation involves conduct protected by Article IV, section 9, of the Oregon  
9 Constitution.

10 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the  
11 commission decides to proceed on its own motion and ends on the date the executive director com-  
12 pletes the statement of the facts determined during the phase under paragraph (d) of this subsection.  
13 The Preliminary Review Phase may not exceed [30] 60 days unless a complaint is filed under this  
14 section with respect to a person who is a candidate for elective public office, the complaint is filed  
15 within 61 days before the date of an election at which the person is a candidate for nomination or  
16 election and a delay is requested in writing by the candidate. If the candidate makes a request under  
17 this paragraph, the Preliminary Review Phase must be completed not later than [30] 60 days after  
18 the date of the election.

19 (b) During the Preliminary Review Phase, the executive director of the commission may seek,  
20 solicit or otherwise obtain any books, papers, records, memoranda or other additional information,  
21 administer oaths and take depositions necessary to determine whether there is cause to undertake  
22 an investigation or whether the alleged violation involves conduct protected by Article IV, section  
23 9, of the Oregon Constitution.

24 (c) The Preliminary Review Phase is confidential. The executive director of the commission and  
25 any commission members and staff may acknowledge receipt of a complaint but may not make any  
26 public comment or publicly disclose any materials relating to a case during the Preliminary Review  
27 Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount  
28 not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by the  
29 executive director or a member of the commission or its staff may file a petition in a court of com-  
30 petent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty  
31 provided in this paragraph.

32 (d)(A) At the end of the Preliminary Review Phase, the executive director of the commission  
33 shall prepare a statement of the facts determined during the phase, including appropriate legal ci-  
34 tations and relevant authorities. Before presentation to the commission, the executive director's  
35 statement shall be reviewed by legal counsel to the commission.

36 (B) Following the conclusion of the Preliminary Review Phase, the executive director of the  
37 commission shall attend an executive session of the commission where the executive director shall  
38 present the statement of the facts and summarize the results of the Preliminary Review Phase to the  
39 commission and recommend to the commission whether there is cause to undertake an investigation  
40 or whether the commission should instead dismiss the complaint or rescind its motion.

41 (C) At the executive session, the commission shall consider the recommendation of the executive  
42 director and make the final determination as to whether there is cause to undertake an investigation  
43 or whether the commission should instead dismiss the complaint or rescind its motion.

44 (D) All case related materials and proceedings shall be open to the public after the commission  
45 makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion.

1 (e) The time limit imposed in this subsection and the commission's inquiry are suspended if a  
2 court has enjoined the executive director or the commission from continuing the inquiry.

3 (5)(a) If the commission determines that there is not cause to undertake an investigation or that  
4 the alleged violation of this chapter involves conduct protected by Article IV, section 9, of the  
5 Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and formally  
6 enter the dismissal or rescission in its records. If the commission considers the recommendation of  
7 the executive director in an executive session but the commission does not affirmatively vote to  
8 undertake an investigation, dismiss the complaint or rescind its motion, the nonaction taken by the  
9 commission shall be considered a dismissal of the complaint or a rescission of its motion. The com-  
10 mission shall notify the person who is the subject of action under this section of the dismissal or  
11 rescission. After dismissal or rescission, the commission may not take further action involving the  
12 person unless a new and different complaint is filed or action on the commission's own motion is  
13 undertaken based on different conduct.

14 (b) If the commission makes a finding of cause to undertake an investigation, the commission  
15 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the  
16 subject of the investigation, identify the issues to be examined and confine the investigation to those  
17 issues. If the commission finds reason to expand the investigation, the commission shall move to do  
18 so, record in its minutes the issues to be examined before expanding the scope of its investigation  
19 and formally notify the complainant, if any, and the person who is the subject of the investigation  
20 of the expansion and the scope of the investigation.

21 (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to  
22 undertake an investigation and ends on the date the commission dismisses the complaint, rescinds  
23 its own motion, issues a settlement order, moves to commence a contested case proceeding or takes  
24 other action justified by the findings. Except as provided in this subsection, the Investigatory Phase  
25 may not exceed 180 days unless a delay is stipulated to by both the person who is the subject of  
26 action under this section and the commission with the commission reserving a portion of the delay  
27 period to complete its actions.

28 (b) During the Investigatory Phase, the commission may seek any additional information, ad-  
29 minister oaths, take depositions and issue subpoenas to compel attendance of witnesses and the  
30 production of books, papers, records, memoranda or other information necessary to complete the  
31 investigation. If any person fails to comply with any subpoena issued under this paragraph or refuses  
32 to testify on any matters on which the person may be lawfully interrogated, the commission shall  
33 follow the procedure described in ORS 183.440 to compel compliance.

34 (c) The time limit imposed in this subsection and the commission's investigation:

35 (A) May be suspended if there is a pending criminal investigation that relates to the issues  
36 arising out of the underlying facts or conduct at issue in the matter before the commission and the  
37 commission determines that it cannot adequately complete its investigation until the pending crimi-  
38 nal investigation is complete; or

39 (B) Are suspended if a court has enjoined the commission from continuing its investigation.

40 (d) At the end of the Investigatory Phase, the commission shall take action by order. The action  
41 may include:

42 (A) Dismissal, with or without comment;

43 (B) Continuation of the investigation for a period not to exceed 30 days for the purpose of ad-  
44 ditional fact-finding;

45 (C) Moving to a contested case proceeding;

1 (D) Entering into a negotiated settlement; or

2 (E) Taking other appropriate action if justified by the findings.

3 (e) The commission may move to a contested case proceeding if the commission determines that  
 4 the information presented to the commission is sufficient to make a preliminary finding of a violation  
 5 of any provision of this chapter or of any rule adopted by the commission under this chapter.

6 (7) A person conducting any inquiry or investigation under this section shall:

7 (a) Conduct the inquiry or investigation in an impartial and objective manner; and

8 (b) Provide to the executive director or the commission all favorable and unfavorable informa-  
 9 tion the person collects.

10 (8) The commission shall report the findings of any inquiry or investigation in an impartial  
 11 manner. The commission shall report both favorable and unfavorable findings and shall make the  
 12 findings available to:

13 (a) The person who is the subject of the inquiry or investigation;

14 (b) The appointing authority, if any;

15 (c) The Attorney General, if the findings relate to a state public official;

16 (d) The appropriate district attorney, if the findings relate to a local public official; and

17 (e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge.

18 (9) Hearings conducted under this chapter must be held before an administrative law judge as-  
 19 signed from the Office of Administrative Hearings established under ORS 183.605. The procedure  
 20 shall be that for a contested case under ORS chapter 183.

21 (10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct  
 22 that occurred more than four years before a complaint is filed or a motion is approved under sub-  
 23 section (1) of this section.

24 (11) This section does not prevent the commission and the person alleged to have violated any  
 25 provision of this chapter or any rule adopted by the commission under this chapter from stipulating  
 26 to a finding of fact concerning the violation and consenting to an appropriate penalty. The com-  
 27 mission shall enter an order based on the stipulation and consent.

28 (12) At any time during proceedings conducted under this section, the commission may enter  
 29 into a negotiated settlement with the person who is the subject of action under this section.

30 (13) As used in this section:

31 (a) "Cause" means that there is a substantial, objective basis for believing that an offense or  
 32 violation may have been committed and the person who is the subject of an inquiry may have com-  
 33 mitted the offense or violation.

34 (b) "Pending" means that a prosecuting attorney is either actively investigating the factual basis  
 35 of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has  
 36 obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of ne-  
 37 gotiating a plea.

38 **SECTION 2. The amendments to ORS 244.260 by section 1 of this 2021 Act apply to the**  
 39 **Preliminary Review Phase of a:**

40 (1) **Written complaint alleging a violation of ORS chapter 244 that is filed with the Oregon**  
 41 **Government Ethics Commission on or after the effective date of this 2021 Act; or**

42 (2) **Decision made by the commission to proceed on its own motion under ORS 244.260**  
 43 **(1)(b) that is made by the commission on or after the effective date of this 2021 Act.**