

(To Resolve Conflicts)

B-Engrossed House Bill 2805

Ordered by the Senate June 23
Including House Amendments dated June 5 and Senate Amendments
dated June 23 to resolve conflicts

Sponsored by Representatives SOSA, NERON, MORGAN (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.

Provides that use of serial electronic written communication or use of intermediaries to communicate may constitute meeting of governing body subject to public meetings law if other specified conditions are satisfied. Provides that public meetings law does not apply to communications that are purely factual or educational, that are unrelated to any matter that governing body could foreseeably deliberate on or decide or that are nonsubstantive in nature.

Requires Oregon Government Ethics Commission to provide, or arrange for other organization to provide, annual training on requirements of public meetings law and best practices to enhance compliance with public meetings law. Requires members of governing bodies with total fiscal year expenditures above threshold amount to attend training at least once per term of public office. Excludes state government governing bodies from training requirements.

Expands duties of commission to conduct investigations, make findings and impose penalties for violations of public meetings law. Authorizes any person to file complaint with commission alleging that meetings were not in compliance with public meetings law. Requires complainant to have first made written grievance with public body whose governing body is alleged to have violated public meetings law so as to provide governing body opportunity to cure decisions made in violation of public meetings law.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to public meetings; creating new provisions; amending ORS 192.610, 192.680, 192.685,
3 192.690, 244.255, 244.260, 244.270, 244.290 and 244.350; repealing section 1, chapter 68, Oregon
4 Laws 2023 (Enrolled Senate Bill 207); and prescribing an effective date.

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

PUBLIC MEETINGS

(Scope of public meetings law)

6
7
8
9
10 **SECTION 1.** ORS 192.610 is amended to read:

11 192.610. As used in ORS 192.610 to 192.690:

12 (1) **“Convening” means:**

13 (a) **Gathering in a physical location;**

14 (b) **Using electronic, video or telephonic technology to be able to communicate**
15 **contemporaneously among participants;**

16 (c) **Using serial electronic written communication among participants; or**

17 (d) **Using an intermediary to communicate among participants.**

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 [(1)] (2) “Decision” means any determination, action, vote or final disposition upon a motion,
2 proposal, resolution, order, ordinance or measure on which a vote of a governing body is required,
3 at any meeting at which a quorum is present.

4 (3) **“Deliberation” means discussion or communication that is part of a decision-making**
5 **process.**

6 [(2)] (4) “Executive session” means any meeting or part of a meeting of a governing body which
7 is closed to certain persons for deliberation on certain matters.

8 [(3)] (5) “Governing body” means the members of any public body which consists of two or more
9 members, with the authority to make decisions for or recommendations to a public body on policy
10 or administration.

11 [(4)] (6) “Public body” means the state, any regional council, county, city or district, or any
12 municipal or public corporation, or any board, department, commission, council, bureau, committee
13 or subcommittee or advisory group or any other agency thereof.

14 [(5)] (7)(a) “Meeting” means the convening of a governing body of a public body for which a
15 quorum is required in order to make a decision or to deliberate toward a decision on any matter.

16 (b) “Meeting” does not include any on-site inspection of any project or program[. “Meeting” also
17 does not include] or the attendance of members of a governing body at any national, regional or
18 state association to which the public body or the members belong.

19 **SECTION 2.** ORS 192.690 is amended to read:

20 192.690. (1) ORS 192.610 to 192.690 do not apply to **any of the following:**

21 (a) [*the*] Deliberations of the Psychiatric Security Review Board[,] or the State Board of Parole
22 and Post-Prison Supervision[.].

23 (b) **Deliberations of** state agencies conducting hearings on contested cases in accordance with
24 the provisions of ORS chapter 183[.].

25 (c) **Deliberations of** [*The review by*] the Workers’ Compensation Board or the Employment Ap-
26 peals Board of similar hearings on contested cases[.].

27 (d) Meetings of the state lawyers assistance committee operating under the provisions of ORS
28 9.568[.].

29 (e) Meetings of the personal and practice management assistance committees operating under
30 the provisions of ORS 9.568[.].

31 (f) **Meetings of** [*the*] county child abuse multidisciplinary teams required to review child abuse
32 cases in accordance with the provisions of ORS 418.747[.].

33 (g) **Meetings of** [*the*] child fatality review teams required to review child fatalities in accord-
34 ance with the provisions of ORS 418.785[.].

35 (h) **Meetings of** [*the*] peer review committees in accordance with the provisions of ORS
36 441.055[.].

37 (i) Mediation conducted under ORS 36.252 to 36.268[.].

38 (j) Any judicial proceeding[.].

39 (k) Meetings of the Oregon Health and Science University Board of Directors or its designated
40 committee regarding candidates for the position of president of the university or regarding sensitive
41 business, financial or commercial matters of the university not customarily provided to competitors
42 related to financings, mergers, acquisitions or joint ventures or related to the sale or other dispo-
43 sition of, or substantial change in use of, significant real or personal property, or related to health
44 system strategies[.].

45 (L) [*or to*] Oregon Health and Science University faculty or staff committee meetings.

1 (m) Communications between or among members of a governing body that are:

2 (A) Purely factual or educational in nature and that convey no deliberation or decision
3 on any matter that might reasonably come before the governing body;

4 (B) Not related to any matter that, at any time, could reasonably be foreseen to come
5 before the governing body for deliberation and decision; or

6 (C) Nonsubstantive in nature, such as communication relating to scheduling, leaves of
7 absence and other similar matters.

8 (2) Because of the grave risk to public health and safety that would be posed by misappropri-
9 ation or misapplication of information considered during such review and approval, ORS 192.610 to
10 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting
11 Council pursuant to ORS 469.530.

12
13 (Training on public meetings law)

14
15 **SECTION 3.** (1)(a) The Oregon Government Ethics Commission shall annually prepare
16 training on the requirements of ORS 192.610 to 192.690 and best practices to enhance com-
17 pliance with those requirements. The commission may delegate the preparation and presen-
18 tation of trainings to another organization, except that the commission must approve the
19 content of training prepared by another organization prior to presentation of the training.

20 (b) At the discretion of the commission, trainings prepared under this section may be
21 presented in live sessions or be made available for viewing online. Training sessions may be
22 presented to multiple governing bodies at any one time and may be presented in a prere-
23 corded format.

24 (2)(a) Every member of a governing body of a public body with total expenditures for a
25 fiscal year of \$1 million or more shall attend or view training prepared under this section
26 at least once during the member's term of office and shall verify the member's attendance
27 using the method prescribed by the commission.

28 (b) A member of a governing body who, under paragraph (a) of this subsection, is not
29 required to attend training is nevertheless encouraged to attend training given under this
30 section.

31 (3) The commission shall, at least once every five years, adjust the expenditure threshold
32 for mandatory training described in subsection (2)(a) of this section to account for changes
33 in inflation and shall by rule establish a new threshold, rounded to the nearest \$100,000, for
34 mandatory training attendance under this section.

35 (4) This section does not apply to governing bodies of state government, as defined in
36 ORS 174.111.

37 **SECTION 4.** Section 3 of this 2023 Act becomes operative on January 1, 2024.

38
39 (Expansion of Oregon Government Ethics Commission
40 oversight of public meetings law)

41
42 **SECTION 5.** (1) A person who believes that a governing body has acted in violation of
43 ORS 192.610 to 192.690 may, within 30 days of the alleged violation, file a written grievance
44 with the public body whose governing body is alleged to have violated ORS 192.610 to 192.690,
45 setting forth the specific facts and circumstances that the person asserts amounted to a vi-

1 violation of ORS 192.610 to 192.690. The grievance must state the identity of the person filing
2 the grievance and any other information required by the Oregon Government Ethics Com-
3 mission by rule.

4 (2) A public body receiving a written grievance filed under this section shall, within 21
5 days of the receipt of the grievance, provide a written response to the person:

6 (a) Acknowledging receipt of the grievance; and

7 (b)(A) Denying that the facts and circumstances as set forth in the grievance accurately
8 reflect the conduct of the governing body and setting forth the facts and circumstances as
9 determined by the public body and the reasons why those facts and circumstances do not
10 amount to a violation of ORS 192.610 to 192.690;

11 (B) Admitting that the facts and circumstances as set forth in the grievance accurately
12 reflect the conduct of the governing body but denying that those facts and circumstances
13 amount to a violation of ORS 192.610 to 192.690; or

14 (C) Admitting that the conduct of the governing body amounted to a violation of ORS
15 192.610 to 192.690 and setting forth the steps the governing body will take to cure the vio-
16 lation, including but not limited to:

17 (i) Rescinding the decision taken by the governing body in violation of ORS 192.610 to
18 192.690; or

19 (ii) Acknowledging in a properly noticed and conducted public meeting held within 45 days
20 of the governing body's original decision that:

21 (I) The original decision was made in violation of ORS 192.610 to 192.690;

22 (II) Good cause exists for the governing body to not rescind the decision; and

23 (III) The governing body's practices will be modified to ensure future violations of ORS
24 192.610 to 192.690 do not occur.

25 (3) The public body shall send a copy of the written grievance and the public body's re-
26 sponse under this section to the Oregon Government Ethics Commission at the time the
27 public body responds to the person who filed the grievance.

28 **SECTION 6.** ORS 192.685 is amended to read:

29 192.685. (1) Notwithstanding ORS 192.680, complaints of violations of [ORS 192.660] any pro-
30 vision of ORS 192.610 to 192.690 alleged to have been committed by public officials may be made
31 to the Oregon Government Ethics Commission for review and investigation as provided by ORS
32 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

33 (2) A complainant may not file a complaint with the commission under this section unless
34 the complainant has complied with the written grievance procedures described in section 5
35 of this 2023 Act and:

36 (a) Has received a response from the public body that denies that a violation of ORS
37 192.610 to 192.690 occurred;

38 (b) Has received a response from the public body that admits that a violation of ORS
39 192.610 to 192.690 occurred that the public body has failed to take adequate steps to cure; or

40 (c) Has not received a response from the public body within the time prescribed for a
41 response under section 5 of this 2023 Act.

42 (3) A complainant shall submit documentation of the complainant's actions taken under
43 section 5 of this 2023 Act and the public body's response as described in subsection (2) of this
44 section, if any. The commission shall dismiss any complaint filed under this section that does
45 not satisfy the requirements of subsection (2) of this section.

1 [(2)] (4) **If a complaint satisfies the requirements of subsection (2) of this section**, the
2 commission may interview witnesses, review minutes and other records and [may] obtain and con-
3 sider any other information pertaining to [executive sessions] **meetings** of the governing body of a
4 public body for purposes of determining whether a violation of ORS [192.660] **192.610 to 192.690**
5 occurred. Information related to an executive session conducted for a purpose authorized by ORS
6 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation
7 but shall be excluded from public disclosure.

8 [(3)] (5) If the commission chooses not to pursue a complaint of a violation brought under sub-
9 section (1) of this section at any time before conclusion of a contested case hearing, the public of-
10 ficial against whom the complaint was brought may be entitled to reimbursement of reasonable costs
11 and attorney fees by the public body to which the official's governing body has authority to make
12 recommendations or for which the official's governing body has authority to make decisions.

13 **SECTION 7.** ORS 244.260 is amended to read:

14 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
15 **or electronically signed** written complaint alleging that there has been a violation of **either**:

16 (A) Any provision of this chapter or of any rule adopted by the commission under this chapter.
17 The complaint shall state the person's reason for believing that a violation occurred and include any
18 evidence relating to the alleged violation.

19 (B) **ORS 192.610 to 192.690. The complaint shall state the particulars of meetings of a**
20 **governing body that were not in compliance with ORS 192.610 to 192.690 and shall state the**
21 **person's reason for believing that a violation occurred. The person shall include any evidence**
22 **relating to the alleged violation with the complaint.**

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

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

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

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

38 (d) Information that the commission considers before approving a motion to proceed on its own
39 motion under this section and any correspondence regarding the motion or potential violation is
40 confidential. The executive director of the commission and the commission members and staff may
41 not make any public comment or publicly disclose any materials relating to the motion pending the
42 commission's approval to proceed. A person who intentionally violates this paragraph is subject to
43 a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation
44 of this paragraph by the executive director or a member of the commission or its staff may file a
45 petition in a court of competent jurisdiction in the county in which the petitioner resides in order

1 to enforce the civil penalty provided in this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 **(B) May be suspended if a suit is commenced under ORS 192.680 concerning the same**
38 **meetings of a governing body that are the subject of the investigation by the commission,**
39 **until a final adjudication of the suit has been made; or**

40 [(B)] (C) Are suspended if a court has enjoined the commission from continuing its investigation.

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

43 (A) Dismissal, with or without comment;

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

- 1 (C) Moving to a contested case proceeding;
- 2 (D) Entering into a negotiated settlement; or
- 3 (E) Taking other appropriate action if justified by the findings.

4 (e) The commission may move to a contested case proceeding if the commission determines that
5 the information presented to the commission is sufficient to make a preliminary finding of:

6 (A) A violation of any provision of this chapter or of any rule adopted by the commission under
7 this chapter; **or**

8 **(B) A violation of any provision of ORS 192.610 to 192.690.**

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

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

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

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

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

17 (b) The appointing authority, if any;

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

19 (d) The appropriate district attorney, if the findings relate to a local public official; *[and]*

20 (e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge; **and**

21 **(f) The governing body of a public body, if the inquiry or investigation concerns an alleged**
22 **violation of ORS 192.610 to 192.690 and the person who is the subject of the inquiry or in-**
23 **vestigation is a member of that governing body.**

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

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

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

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

36 (13) As used in this section:

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

40 **(b) "Governing body" has the meaning given that term in ORS 192.610.**

41 *[(b)]* (c) "Pending" means that a prosecuting attorney is either actively investigating the factual
42 basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument,
43 has obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of
44 negotiating a plea.

45 **SECTION 7a. If Senate Bill 207 becomes law, section 1, chapter 68, Oregon Laws 2023**

1 **(Enrolled Senate Bill 207) (amending ORS 244.260), is repealed and ORS 244.260, as amended**
2 **by section 7 of this 2023 Act, is amended to read:**

3 244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed or
4 electronically signed written complaint alleging that there has been a violation of either:

5 (A) Any provision of this chapter or of any rule adopted by the commission under this chapter.
6 The complaint shall state the person's reason for believing that a violation occurred and include any
7 evidence relating to the alleged violation.

8 (B) ORS 192.610 to 192.690. The complaint shall state the particulars of meetings of a governing
9 body that were not in compliance with ORS 192.610 to 192.690 and shall state the person's reason
10 for believing that a violation occurred. The person shall include any evidence relating to the alleged
11 violation with the complaint.

12 (b) If at any time the commission has reason to believe that there has been a violation of a
13 provision of this chapter **or ORS 192.660** or [of] a rule adopted by the commission under this chap-
14 ter, the commission may proceed under this section on its own motion as if the commission had re-
15 ceived a complaint.

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

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

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

28 (d) Information that the commission considers before approving a motion to proceed on its own
29 motion under this section and any correspondence regarding the motion or potential violation is
30 confidential. The executive director of the commission and the commission members and staff may
31 not make any public comment or publicly disclose any materials relating to the motion pending the
32 commission's approval to proceed. A person who intentionally violates this paragraph is subject to
33 a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation
34 of this paragraph by the executive director or a member of the commission or its staff may file a
35 petition in a court of competent jurisdiction in the county in which the petitioner resides in order
36 to enforce the civil penalty provided in this paragraph.

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

43 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
44 commission decides to proceed on its own motion and ends on the date the executive director com-
45 pletes the statement of the facts determined during the phase under paragraph (d) of this subsection.

1 The Preliminary Review Phase may not exceed 60 days unless a complaint is filed under this section
2 with respect to a person who is a candidate for elective public office, the complaint is filed within
3 61 days before the date of an election at which the person is a candidate for nomination or election
4 and a delay is requested in writing by the candidate. If the candidate makes a request under this
5 paragraph, the Preliminary Review Phase must be completed not later than 60 days after the date
6 of the election.

7 (b) During the Preliminary Review Phase, the executive director of the commission may seek,
8 solicit or otherwise obtain any books, papers, records, memoranda or other additional information,
9 administer oaths and take depositions necessary to determine whether there is cause to undertake
10 an investigation or whether the alleged violation involves conduct protected by Article IV, section
11 9, of the Oregon Constitution.

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

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

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

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

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

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

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

1 undertaken based on different conduct.

2 (b) If the commission makes a finding of cause to undertake an investigation, the commission
3 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
4 subject of the investigation, identify the issues to be examined and confine the investigation to those
5 issues. If the commission finds reason to expand the investigation, the commission shall move to do
6 so, record in its minutes the issues to be examined before expanding the scope of its investigation
7 and formally notify the complainant, if any, and the person who is the subject of the investigation
8 of the expansion and the scope of the investigation.

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

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

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

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

27 (B) May be suspended if a suit is commenced under ORS 192.680 concerning the same meetings
28 of a governing body that are the subject of the investigation by the commission, until a final adju-
29 dication of the suit has been made; or

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

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

33 (A) Dismissal, with or without comment;

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

36 (C) Moving to a contested case proceeding;

37 (D) Entering into a negotiated settlement; or

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

39 (e) The commission may move to a contested case proceeding if the commission determines that
40 the information presented to the commission is sufficient to make a preliminary finding of:

41 (A) A violation of any provision of this chapter or of any rule adopted by the commission under
42 this chapter; or

43 (B) A violation of any provision of ORS 192.610 to 192.690.

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

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

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

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

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

7 (b) The appointing authority, if any;

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

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

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

11 (f) The governing body of a public body, if the inquiry or investigation concerns an alleged vi-
12 olation of ORS 192.610 to 192.690 and the person who is the subject of the inquiry or investigation
13 is a member of that governing body.

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

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

20 (11) This section does not prevent the commission and the person alleged to have violated any
21 provision of this chapter **or ORS 192.660** or any rule adopted by the commission under this chapter
22 from stipulating to a finding of fact concerning the violation and consenting to an appropriate pen-
23 alty. The commission shall enter an order based on the stipulation and consent.

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

26 (13) As used in this section:

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

30 (b) "Governing body" has the meaning given that term in ORS 192.610.

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

35 **SECTION 7b. If Senate Bill 207 becomes law, the amendments to ORS 244.260 by section**
36 **7a of this 2023 Act become operative on January 1, 2024.**

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

38 192.680. (1) A decision made by a governing body of a public body in violation of ORS 192.610
39 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public
40 body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is
41 reinstated is effective from the date of its initial adoption.

42 (2) Any person affected by a decision of a governing body of a public body may commence a suit
43 in the circuit court for the county in which the governing body ordinarily meets, for the purpose
44 of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members
45 of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or

1 decisions of the governing body.

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

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

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

17 (6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS
18 192.610 to 192.690, **except that this subsection does not apply to proceedings of the Oregon**
19 **Government Ethics Commission.**

20 **SECTION 9.** ORS 244.255 is amended to read:

21 244.255. (1) The Oregon Government Ethics Commission shall estimate in advance the expenses
22 that it will incur during a biennium in carrying out the provisions of ORS 171.725 to 171.785, [and]
23 171.992 **and 192.610 to 192.690** and this chapter. The commission shall also determine what per-
24 centage of the expenses should be borne by the following two groups of public bodies:

25 (a) Public bodies in state government; and

26 (b) Local governments, local service districts and special government bodies that are subject to
27 the Municipal Audit Law.

28 (2) The commission shall charge each public body for the public body's share of the expenses
29 described in subsection (1) of this section for the biennium. The amount to be charged each public
30 body shall be determined as follows:

31 (a) The commission shall determine the rate to be charged public bodies in state government.
32 The same rate shall be applied to each public body described in this paragraph. To determine the
33 amount of the charge for each public body, the commission shall multiply the rate determined under
34 this paragraph by the number of public officials serving the public body.

35 (b) The commission shall set the charge for local governments, local service districts and special
36 government bodies that are subject to the Municipal Audit Law so that each local government, local
37 service district or special government body described in this paragraph pays an amount of the total
38 expenses for the group that bears the same proportion to the total expenses that the amount charged
39 to the local government, local service district or special government body for the municipal audit
40 fee under ORS 297.485 bears to the total amount assessed for the municipal audit fee.

41 (3) Each public body shall pay to the credit of the commission the charge described in this
42 section as an administrative expense from funds or appropriations available to the public body in
43 the same manner as other claims against the public body are paid.

44 (4) All moneys received by the commission under this section shall be credited to the Oregon
45 Government Ethics Commission Account established under ORS 244.345.

1 (5) The commission shall adopt rules specifying the methods for calculating and collecting the
2 rates and charges described in this section.

3 (6) As used in this section:

4 (a) "Local government" and "local service district" have the meanings given those terms in ORS
5 174.116.

6 (b) "Public body" has the meaning given that term in ORS 174.109.

7 (c) "Public official," notwithstanding ORS 244.020 (15), means any person who, on the date the
8 commission charges the public body under this section, is serving the public body as an officer or
9 employee.

10 (d) "Special government body" has the meaning given that term in ORS 174.117.

11 (e) "State government" has the meaning given that term in ORS 174.111.

12 **SECTION 10.** ORS 244.270 is amended to read:

13 244.270. (1) If the Oregon Government Ethics Commission finds that an appointed public official
14 has violated any provision of this chapter or any rule adopted under this chapter, **or has violated**
15 **any provision of ORS 192.610 to 192.690 with intentional disregard of the law or willful mis-**
16 **conduct**, the finding is prima facie evidence of unfitness where removal is authorized for cause ei-
17 ther by law or pursuant to section 6, Article VII (Amended) of the Oregon Constitution.

18 (2) If the commission finds that a public official has violated any provision of this chapter or
19 any rule adopted under this chapter, **or has violated any provision of ORS 192.610 to 192.690**, the
20 commission shall notify the public body, as defined in ORS 174.109, that the public official serves.
21 The notice shall describe the violation and any action taken by the commission. The commission
22 shall provide the notice not later than 10 business days after the date the commission takes final
23 action against the public official.

24 **SECTION 11.** ORS 244.290 is amended to read:

25 244.290. (1) The Oregon Government Ethics Commission shall:

26 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
27 required to file the statements under this chapter or pursuant to a resolution adopted under ORS
28 244.160.

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

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

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

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

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

39 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
40 171.785, 171.992[, 192.660 and 192.685] **and 192.610 to 192.690** and this chapter, including rules to:

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

43 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
44 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
45 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant

- 1 the public disclosure;
- 2 (c) Establish an administrative process whereby a person subpoenaed by the commission may
3 obtain a protective order;
- 4 (d) List criteria and establish a process for the commission to use prosecutorial discretion to
5 decide whether to proceed with an inquiry or investigation;
- 6 (e) Establish a procedure under which the commission shall conduct accuracy audits of a sample
7 of reports or statements filed with the commission under this chapter or ORS 171.725 to 171.785;
- 8 (f) Describe the application of provisions exempting items from the definition of “gift” in ORS
9 244.020;
- 10 (g) Specify when a continuing violation is considered a single violation or a separate and dis-
11 tinct violation for each day the violation occurs; and
- 12 (h) Set criteria for determining the amount of civil penalties that the commission may impose.
- 13 (3) The commission may adopt rules that:
- 14 (a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes
15 that qualify under the class exception from the definition of “potential conflict of interest” under
16 ORS 244.020;
- 17 (b) Require the disclosure and reporting of gifts or other compensation made to or received by
18 a public official or candidate;
- 19 (c) Establish criteria for cases in which information relating to notices of actual or potential
20 conflicts of interest shall, may not or may be provided to the commission under ORS 244.130; or
- 21 (d) Allow the commission to accept the filing of a statement containing less than all of the in-
22 formation required under ORS 244.060 and 244.070 if the public official or candidate certifies on the
23 statement that the information contained on the statement previously filed is unchanged or certifies
24 only as to any changed material.
- 25 (4) Not less frequently than once each calendar year, the commission shall:
- 26 (a) Consider adoption of rules the commission deems necessary to implement or interpret pro-
27 visions of this chapter relating to issues the commission determines are of general interest to public
28 officials or candidates or that are addressed by the commission or by commission staff on a recur-
29 ring basis; and
- 30 (b) Review rules previously adopted by the commission to determine whether the rules have
31 continuing applicability or whether the rules should be amended or repealed.
- 32 (5) The commission shall adopt by rule an electronic filing system under which statements re-
33 quired to be filed under ORS 244.050 and 244.217 must be filed, without a fee, with the commission
34 in an electronic format.
- 35 (6) The commission shall make available in a searchable format for review by the public using
36 the Internet:
- 37 (a) Statements filed under ORS 244.050 and 244.217;
- 38 (b) Advisory opinions issued by the commission or the executive director of the commission;
- 39 (c) Findings issued by the commission under ORS 244.260 in instances where the commission
40 determines that there has been a violation of a provision of this chapter or of any rule adopted by
41 the commission under this chapter. Nothing in this paragraph requires the commission to make
42 publicly available materials that are otherwise exempt from public disclosure or that are required
43 to be kept confidential by the commission; and
- 44 (d) Lobbyist registration statements and revisions and updates to lobbyist registration state-
45 ments filed under ORS 171.740. The information required under this paragraph must be available in

1 a searchable format for review by the public using the Internet not later than one calendar day after
2 the lobbyist files the information with the commission.

3 **SECTION 12.** ORS 244.350 is amended to read:

4 244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-
5 ceed:

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

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

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

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

12 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil
13 penalties not to exceed \$1,000 for violation of any provision of ORS [192.660] **192.610 to 192.690.**

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

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

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

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

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

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

31 **(6)(a) A civil penalty imposed under this section for a violation of ORS 192.610 to 192.690**
32 **is a personal liability of each member of the governing body on whom the penalty is imposed**
33 **and may not be paid for or indemnified by the governing body or public body that the member**
34 **is associated with.**

35 **(b) As used in this subsection, "governing body" and "public body" have the meanings**
36 **given those terms in ORS 192.610.**

37
38 **MISCELLANEOUS**
39

40 **SECTION 13. Sections 3 and 5 of this 2023 Act and ORS 192.695 are added to and made a**
41 **part of ORS 192.610 to 192.690.**

42 **SECTION 14. Notwithstanding any other law limiting expenditures, the limitation on**
43 **expenditures established by section 1, chapter 61, Oregon Laws 2023 (Enrolled House Bill**
44 **5021), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses**
45 **from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements**

1 from federal service agreements, but excluding lottery funds and federal funds not described
2 in section 1, chapter 61, Oregon Laws 2023 (Enrolled House Bill 5021), collected or received
3 by the Oregon Government Ethics Commission, is increased by \$1,365,307.

4 SECTION 15. The unit captions used in this 2023 Act are provided only for the conven-
5 ience of the reader and do not become part of the statutory law of this state or express any
6 legislative intent in the enactment of this 2023 Act.

7
8 **EFFECTIVE DATE**

9
10 SECTION 16. This 2023 Act takes effect on the 91st day after the date on which the 2023
11 regular session of the Eighty-second Legislative Assembly adjourns sine die.

12 _____