

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED HOUSE BILL 2805

By JOINT COMMITTEE ON WAYS AND MEANS

June 23

1 On page 1 of the printed A-engrossed bill, line 3, after “244.350;” insert “repealing section 1,
2 chapter 68, Oregon Laws 2023 (Enrolled Senate Bill 207);”.

3 On page 8, after line 41, insert:

4 **“SECTION 7a. If Senate Bill 207 becomes law, section 1, chapter 68, Oregon Laws 2023**
5 **(Enrolled Senate Bill 207) (amending ORS 244.260), is repealed and ORS 244.260, as amended**
6 **by section 7 of this 2023 Act, is amended to read:**

7 “244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed
8 or electronically signed written complaint alleging that there has been a violation of either:

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

12 “(B) ORS 192.610 to 192.690. The complaint shall state the particulars of meetings of a governing
13 body that were not in compliance with ORS 192.610 to 192.690 and shall state the person’s reason
14 for believing that a violation occurred. The person shall include any evidence relating to the alleged
15 violation with the complaint.

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

20 “(2)(a) Not later than two business days after receiving a complaint under this section, the
21 commission shall notify the person who is the subject of the complaint.

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

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

32 “(d) Information that the commission considers before approving a motion to proceed on its own
33 motion under this section and any correspondence regarding the motion or potential violation is
34 confidential. The executive director of the commission and the commission members and staff may
35 not make any public comment or publicly disclose any materials relating to the motion pending the

1 commission's approval to proceed. A person who intentionally violates this paragraph is subject to
2 a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation
3 of this paragraph by the executive director or a member of the commission or its staff may file a
4 petition in a court of competent jurisdiction in the county in which the petitioner resides in order
5 to enforce the civil penalty provided in this paragraph.

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

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

21 “(b) During the Preliminary Review Phase, the executive director of the commission may seek,
22 solicit or otherwise obtain any books, papers, records, memoranda or other additional information,
23 administer oaths and take depositions necessary to determine whether there is cause to undertake
24 an investigation or whether the alleged violation involves conduct protected by Article IV, section
25 9, of the Oregon Constitution.

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

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

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

43 “(C) At the executive session, the commission shall consider the recommendation of the execu-
44 tive director and make the final determination as to whether there is cause to undertake an inves-
45 tigation or whether the commission should instead dismiss the complaint or rescind its motion.

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

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

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

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

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

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

36 “(c) The time limit imposed in this subsection and the commission’s investigation:

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

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

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

45 “(d) At the end of the Investigatory Phase, the commission shall take action by order. The action

1 may include:

2 “(A) Dismissal, with or without comment;

3 “(B) Continuation of the investigation for a period not to exceed 30 days for the purpose of ad-

4 ditional fact-finding;

5 “(C) Moving to a contested case proceeding;

6 “(D) Entering into a negotiated settlement; or

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

8 “(e) The commission may move to a contested case proceeding if the commission determines that

9 the information presented to the commission is sufficient to make a preliminary finding of:

10 “(A) A violation of any provision of this chapter or of any rule adopted by the commission under

11 this chapter; or

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

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

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

15 “(b) Provide to the executive director or the commission all favorable and unfavorable informa-

16 tion the person collects.

17 “(8) The commission shall report the findings of any inquiry or investigation in an impartial

18 manner. The commission shall report both favorable and unfavorable findings and shall make the

19 findings available to:

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

21 “(b) The appointing authority, if any;

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

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

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

25 “(f) The governing body of a public body, if the inquiry or investigation concerns an alleged vi-

26 olation of ORS 192.610 to 192.690 and the person who is the subject of the inquiry or investigation

27 is a member of that governing body.

28 “(9) Hearings conducted under this chapter must be held before an administrative law judge

29 assigned from the Office of Administrative Hearings established under ORS 183.605. The procedure

30 shall be that for a contested case under ORS chapter 183.

31 “(10) The Oregon Government Ethics Commission may not inquire into or investigate any con-

32 duct that occurred more than four years before a complaint is filed or a motion is approved under

33 subsection (1) of this section.

34 “(11) This section does not prevent the commission and the person alleged to have violated any

35 provision of this chapter **or ORS 192.660** or any rule adopted by the commission under this chapter

36 from stipulating to a finding of fact concerning the violation and consenting to an appropriate pen-

37 alty. The commission shall enter an order based on the stipulation and consent.

38 “(12) At any time during proceedings conducted under this section, the commission may enter

39 into a negotiated settlement with the person who is the subject of action under this section.

40 “(13) As used in this section:

41 “(a) ‘Cause’ means that there is a substantial, objective basis for believing that an offense or

42 violation may have been committed and the person who is the subject of an inquiry may have com-

43 mitted the offense or violation.

44 “(b) ‘Governing body’ has the meaning given that term in ORS 192.610.

45 “(c) ‘Pending’ means that a prosecuting attorney is either actively investigating the factual basis

1 of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has
2 obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of ne-
3 gotiating a plea.

4 **“SECTION 7b. If Senate Bill 207 becomes law, the amendments to ORS 244.260 by section**
5 **7a of this 2023 Act become operative on January 1, 2024.”**

6
