

Requested by JOINT COMMITTEE ON WAYS AND MEANS

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO  
A-ENGROSSED HOUSE BILL 2805**

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

4 On page 8, after line 41, insert:

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7 **is repealed and ORS 244.260, as amended by section 7 of this 2023 Act,**  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

9 “244.260. (1)(a) Any person may file with the Oregon Government Ethics  
10 Commission a signed or electronically signed written complaint alleging that  
11 there has been a violation of either:

12 “(A) Any provision of this chapter or of any rule adopted by the com-  
13 mission under this chapter. The complaint shall state the person’s reason for  
14 believing that a violation occurred and include any evidence relating to the  
15 alleged violation.

16 “(B) ORS 192.610 to 192.690. The complaint shall state the particulars of  
17 meetings of a governing body that were not in compliance with ORS 192.610  
18 to 192.690 and shall state the person’s reason for believing that a violation  
19 occurred. The person shall include any evidence relating to the alleged vio-  
20 lation with the complaint.

21 “(b) If at any time the commission has reason to believe that there has

1 been a violation of a provision of this chapter **or ORS 192.660** or [of] a rule  
2 adopted by the commission under this chapter, the commission may proceed  
3 under this section on its own motion as if the commission had received a  
4 complaint.

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

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

14 “(c) The commission shall give notice of the complaint or motion under  
15 paragraph (a) or (b) of this subsection. The notice must describe the nature  
16 of the alleged violation. The notice must include copies of all materials  
17 submitted with a complaint. If the commission will consider a motion to  
18 proceed without a complaint, the notice must provide copies of all materials  
19 that the commission will consider at the hearing on the motion.

20 “(d) Information that the commission considers before approving a motion  
21 to proceed on its own motion under this section and any correspondence re-  
22 garding the motion or potential violation is confidential. The executive di-  
23 rector of the commission and the commission members and staff may not  
24 make any public comment or publicly disclose any materials relating to the  
25 motion pending the commission’s approval to proceed. A person who inten-  
26 tionally violates this paragraph is subject to a civil penalty in an amount  
27 not to exceed \$1,000. Any person aggrieved as a result of a violation of this  
28 paragraph by the executive director or a member of the commission or its  
29 staff may file a petition in a court of competent jurisdiction in the county  
30 in which the petitioner resides in order to enforce the civil penalty provided

1 in this paragraph.

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

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

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

26 “(c) The Preliminary Review Phase is confidential. The executive director  
27 of the commission and any commission members and staff may acknowledge  
28 receipt of a complaint but may not make any public comment or publicly  
29 disclose any materials relating to a case during the Preliminary Review  
30 Phase. A person who intentionally violates this paragraph is subject to a

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

6 “(d)(A) At the end of the Preliminary Review Phase, the executive direc-  
7 tor of the commission shall prepare a statement of the facts determined  
8 during the phase, including appropriate legal citations and relevant author-  
9 ities. Before presentation to the commission, the executive director’s state-  
10 ment shall be reviewed by legal counsel to the commission.

11 “(B) Following the conclusion of the Preliminary Review Phase, the  
12 executive director of the commission shall attend an executive session of the  
13 commission where the executive director shall present the statement of the  
14 facts and summarize the results of the Preliminary Review Phase to the  
15 commission and recommend to the commission whether there is cause to  
16 undertake an investigation or whether the commission should instead dismiss  
17 the complaint or rescind its motion.

18 “(C) At the executive session, the commission shall consider the recom-  
19 mendation of the executive director and make the final determination as to  
20 whether there is cause to undertake an investigation or whether the com-  
21 mission should instead dismiss the complaint or rescind its motion.

22 “(D) All case related materials and proceedings shall be open to the pub-  
23 lic after the commission makes a finding of cause to undertake an investi-  
24 gation, dismisses a complaint or rescinds a motion.

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

28 “(5)(a) If the commission determines that there is not cause to undertake  
29 an investigation or that the alleged violation of this chapter involves con-  
30 duct protected by Article IV, section 9, of the Oregon Constitution, the

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

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

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

30 “(b) During the Investigatory Phase, the commission may seek any addi-

1 tional information, administer oaths, take depositions and issue subpoenas  
2 to compel attendance of witnesses and the production of books, papers, re-  
3 cords, memoranda or other information necessary to complete the investi-  
4 gation. If any person fails to comply with any subpoena issued under this  
5 paragraph or refuses to testify on any matters on which the person may be  
6 lawfully interrogated, the commission shall follow the procedure described  
7 in ORS 183.440 to compel compliance.

8 “(c) The time limit imposed in this subsection and the commission’s in-  
9 vestigation:

10 “(A) May be suspended if there is a pending criminal investigation that  
11 relates to the issues arising out of the underlying facts or conduct at issue  
12 in the matter before the commission and the commission determines that it  
13 cannot adequately complete its investigation until the pending criminal in-  
14 vestigation is complete;

15 “(B) May be suspended if a suit is commenced under ORS 192.680 con-  
16 cerning the same meetings of a governing body that are the subject of the  
17 investigation by the commission, until a final adjudication of the suit has  
18 been made; or

19 “(C) Are suspended if a court has enjoined the commission from continu-  
20 ing its investigation.

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

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

24 “(B) Continuation of the investigation for a period not to exceed 30 days  
25 for the purpose of additional fact-finding;

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

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

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

29 “(e) The commission may move to a contested case proceeding if the  
30 commission determines that the information presented to the commission is

1 sufficient to make a preliminary finding of:

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

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

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

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

9 “(b) Provide to the executive director or the commission all favorable and  
10 unfavorable information the person collects.

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

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

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

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

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

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

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

25 “(9) Hearings conducted under this chapter must be held before an ad-  
26 ministrative law judge assigned from the Office of Administrative Hearings  
27 established under ORS 183.605. The procedure shall be that for a contested  
28 case under ORS chapter 183.

29 “(10) The Oregon Government Ethics Commission may not inquire into  
30 or investigate any conduct that occurred more than four years before a

1 complaint is filed or a motion is approved under subsection (1) of this sec-  
2 tion.

3 “(11) This section does not prevent the commission and the person alleged  
4 to have violated any provision of this chapter **or ORS 192.660** or any rule  
5 adopted by the commission under this chapter from stipulating to a finding  
6 of fact concerning the violation and consenting to an appropriate penalty.  
7 The commission shall enter an order based on the stipulation and consent.

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

11 “(13) As used in this section:

12 “(a) ‘Cause’ means that there is a substantial, objective basis for believing  
13 that an offense or violation may have been committed and the person who  
14 is the subject of an inquiry may have committed the offense or violation.

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

16 “(c) ‘Pending’ means that a prosecuting attorney is either actively inves-  
17 tigating the factual basis of the alleged criminal conduct, is preparing to  
18 seek or is seeking an accusatory instrument, has obtained an accusatory in-  
19 strument and is proceeding to trial or is in trial or in the process of nego-  
20 tiating a plea.

21 **“SECTION 7b. If Senate Bill 207 becomes law, the amendments to**  
22 **ORS 244.260 by section 7a of this 2023 Act become operative on January**  
23 **1, 2024.”**

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