

House Bill 3945

Sponsored by Representative WALLAN

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes changes to the OGE's duties and number of members. The Act states whether some situations may be ethics violations. The Act allows local government officials to vote on changes to pay and stipends. (Flesch Readability Score: 63.0).

Limits duties of the Oregon Government Ethics Commission in conducting investigations, making findings and imposing penalties regarding violations of quorum requirements in public meetings law to intentional violations. Provides that the use of serial electronic written communication among members of a governing body within a 30-day period may constitute a meeting of a governing body subject to public meetings law if other specified conditions are satisfied. Exempts from the prohibition on the use of official positions or office to obtain financial gain or avoid financial detriment any legal expenses incurred by a public official or governmental agency for specified purposes. Permits local government officials to vote on matters related to official compensation. Increases the size of the commission to 11 members and requires the Governor to appoint two practicing attorneys to the commission.

A BILL FOR AN ACT

1
2 Relating to the Oregon Government Ethics Commission; amending ORS 192.610, 192.685, 244.040,
3 244.250, 244.260, 244.270, 244.290 and 244.350.

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

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

6 192.610. As used in ORS 192.610 to 192.705:

7 (1) "Convening" means:

8 (a) Gathering in a physical location;

9 (b) Using electronic, video or telephonic technology to be able to communicate
10 contemporaneously among participants;

11 (c) Using serial electronic written communication among participants **within a 30-day period**;
12 or

13 (d) Using an intermediary to communicate among participants.

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

17 (3) "Deliberation" means discussion or communication that is part of a decision-making process.

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

20 (5) "Governing body" means the members of any public body which consists of two or more
21 members, with the authority to make decisions for or recommendations to a public body on policy
22 or administration.

23 (6) "Public body" means the state, any regional council, county, city or district, or any municipal
24 or public corporation, or any board, department, commission, council, bureau, committee or sub-

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 committee or advisory group or any other agency thereof.

2 (7)(a) "Meeting" means the convening of a governing body of a public body for which a quorum
3 is required in order to make a decision or to deliberate toward a decision on any matter.

4 (b) "Meeting" does not include any on-site inspection of any project or program or the attend-
5 ance of members of a governing body at any national, regional or state association to which the
6 public body or the members belong.

7 **SECTION 2.** ORS 192.685 is amended to read:

8 192.685. (1)(a) Notwithstanding ORS 192.680, complaints of violations of any provision of ORS
9 192.610 to 192.705 alleged to have been committed by public officials may be made to the Oregon
10 Government Ethics Commission for review and investigation as provided by ORS 244.260 and for
11 possible imposition of civil penalties as provided by ORS 244.350, **except that a complaint of a**
12 **violation of ORS 192.630 may be made only if the complaint alleges that the violation of ORS**
13 **192.630 was intentional.**

14 (b) If at any time the commission has reason to believe that there has been a violation of ORS
15 192.660, the commission may proceed under this section and as provided by ORS 244.260 on its own
16 motion as if the commission had received a complaint.

17 (2) A complainant may not file a complaint with the commission under this section unless the
18 complainant has complied with the written grievance procedures described in ORS 192.705 and:

19 (a) Has received a response from the public body that denies that a violation of ORS 192.610 to
20 192.705 occurred;

21 (b) Has received a response from the public body that admits that a violation of ORS 192.610 to
22 192.705 occurred that the public body has failed to take adequate steps to cure; or

23 (c) Has not received a response from the public body within the time prescribed for a response
24 under ORS 192.705.

25 (3) A complainant shall submit documentation of the complainant's actions taken under ORS
26 192.705 and the public body's response as described in subsection (2) of this section, if any. The
27 commission shall dismiss any complaint filed under this section that does not satisfy the require-
28 ments of subsection (2) of this section.

29 (4) If a complaint satisfies the requirements of subsection (2) of this section, the commission may
30 interview witnesses, review minutes and other records and obtain and consider any other informa-
31 tion pertaining to meetings of the governing body of a public body for purposes of determining
32 whether a violation of ORS 192.610 to 192.705 occurred **and, if a violation of ORS 192.630 oc-**
33 **curred, whether ORS 192.630 was violated with intentional disregard of the law or willful**
34 **misconduct.** Information related to an executive session conducted for a purpose authorized by ORS
35 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation
36 but shall be excluded from public disclosure.

37 (5) If the commission chooses not to pursue a complaint of a violation brought under subsection
38 (1) of this section at any time before conclusion of a contested case hearing, the public official
39 against whom the complaint was brought may be entitled to reimbursement of reasonable costs and
40 attorney fees by the public body to which the official's governing body has authority to make rec-
41 ommendations or for which the official's governing body has authority to make decisions.

42 **SECTION 3.** ORS 244.040 is amended to read:

43 244.040. (1) Except as provided in subsection (2) of this section, a public official may not use or
44 attempt to use official position or office to obtain financial gain or avoidance of financial detriment
45 for the public official, a relative or member of the household of the public official, or any business

1 with which the public official or a relative or member of the household of the public official is as-
 2 sociated, if the financial gain or avoidance of financial detriment would not otherwise be available
 3 but for the public official's holding of the official position or office.

4 (2) Subsection (1) of this section does not apply to:

5 (a) Any part of an official compensation package as determined by the public body that the
 6 public official serves.

7 (b) The receipt by a public official or a relative or member of the household of the public official
 8 of an honorarium or any other item allowed under ORS 244.042.

9 (c) Reimbursement of expenses.

10 (d) An unsolicited award for professional achievement.

11 (e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or
 12 a relative or member of the household of the public official from a source that could reasonably be
 13 known to have a legislative or administrative interest.

14 (f) Gifts received by a public official or a relative or member of the household of the public of-
 15 ficial from a source that could not reasonably be known to have a legislative or administrative in-
 16 terest.

17 (g) The receipt by a public official or a relative or member of the household of the public official
 18 of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS
 19 244.020.

20 (h) Contributions made to a legal expense trust fund established under ORS 244.209 for the
 21 benefit of the public official.

22 **(i) Legal expenses incurred by a governmental agency in providing legal advice to a public**
 23 **official who serves or is employed by the agency, when the expenses are incurred for the**
 24 **purpose of ensuring the public official's compliance with any state, federal or local law cre-**
 25 **ating an obligation on the person acting in their capacity as a public official.**

26 **(j) Legal expenses incurred by a governmental agency in providing legal advice or repre-**
 27 **sentation to a public official who serves or is employed by the agency, when the expenses**
 28 **are incurred for the purpose of defending the public official in a proceeding or investigation**
 29 **brought or maintained by the Oregon Government Ethics Commission and provided that the**
 30 **action serving as the basis for the proceeding or investigation was a good faith action taken**
 31 **by the public official in compliance with legal advice provided by the agency.**

32 **(k) Legal expenses incurred by a governmental agency in providing legal advice or rep-**
 33 **resentation to a public official who serves or is employed by the agency, when the expenses**
 34 **are incurred in connection with the issuance of a court's stalking protective order under**
 35 **ORS 30.866 or 163.738 and provided that the conduct serving as the basis for the order relates**
 36 **to or arises from the course and scope of duties of the person as a public official and inter-**
 37 **feres with the operation of the agency.**

38 **(L) Legal expenses incurred by a public official when directed, by vote of the governing**
 39 **body of the governmental agency that the public official serves or is employed by, to obtain**
 40 **legal advice or representation in connection with any civil, criminal or other legal proceeding**
 41 **or investigation that relates to or arises from the course and scope of duties of the person**
 42 **as a public official.**

43 **(m) A vote made by a local government official, acting in their capacity as a local gov-**
 44 **ernment official, to approve a stipend, salary or official compensation, provided that the vote**
 45 **is for the purpose of approving a budget in compliance with ORS chapter 294 or is made in**

1 **a public meeting that complies with the requirements of ORS 192.610 to 192.705.**

2 (3) A public official may not solicit or receive, either directly or indirectly, and a person may
 3 not offer or give to any public official any pledge or promise of future employment, based on any
 4 understanding that the vote, official action or judgment of the public official would be influenced
 5 by the pledge or promise.

6 (4) A public official may not attempt to further or further the personal gain of the public official
 7 through the use of confidential information gained in the course of or by reason of holding position
 8 as a public official or activities of the public official.

9 (5) A former public official may not attempt to further or further the personal gain of any person
 10 through the use of confidential information gained in the course of or by reason of holding position
 11 as a public official or the activities of the person as a public official.

12 (6) A person may not attempt to represent or represent a client for a fee before the governing
 13 body of a public body of which the person is a member. This subsection does not apply to the
 14 person's employer, business partner or other associate.

15 (7) A current or former public official may not solicit, receive or use public moneys from a
 16 public body, as defined in ORS 174.109, to pay or make payments on a civil penalty imposed on the
 17 current or former public official by the Oregon Government Ethics Commission in accordance with
 18 ORS 171.992 or 244.350.

19 (8) The provisions of this section apply regardless of whether actual conflicts of interest or po-
 20 tential conflicts of interest are announced or disclosed under ORS 244.120.

21 **(9) As used in this section, "local government official" has the meaning given that term**
 22 **in ORS 294.805.**

23 **SECTION 4.** ORS 244.250 is amended to read:

24 244.250. (1) The Oregon Government Ethics Commission is established, consisting of [nine] 11
 25 members. The appointment of a member of the commission is subject to confirmation by the Senate
 26 in the manner provided in ORS 171.562 and 171.565. Members shall be appointed in the following
 27 manner:

28 (a) The Governor shall appoint eight members from among persons recommended, two each by
 29 the leadership of the Democratic and Republican parties in each house of the Legislative Assembly.
 30 If a person recommended by the leadership of the Democratic or Republican party is not approved
 31 by the Governor, the leadership shall recommend another person.

32 (b) The Governor shall appoint one member without leadership recommendation.

33 **(c) The Governor shall appoint two regularly licensed and practicing attorneys of this**
 34 **state from among persons jointly recommended by the League of Oregon Cities, Association**
 35 **of Oregon Counties, Oregon School Boards Association and Special Districts Association of**
 36 **Oregon. If a person recommended under this paragraph is not approved by the Governor, the**
 37 **League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association**
 38 **and Special Districts Association of Oregon shall jointly recommend another person.**

39 (2) A person who holds any public office listed in ORS 244.050 (1) except as a member of the
 40 commission may not be appointed to the commission. No more than [three] **four** members may be
 41 members of the same political party.

42 (3) The term of office of a member is four years. A member is not eligible to be appointed to
 43 more than two full terms but may additionally serve out an unexpired term. Vacancies shall be filled
 44 by the appointing authority for the unexpired term.

45 (4) The commission shall elect a chairperson and vice chairperson for such terms and duties as

1 the commission may require.

2 (5) A quorum consists of [*five*] **six** members but a final decision may not be made without an
3 affirmative vote of a majority of the members appointed to the commission.

4 (6) Members shall be entitled to compensation and expenses as provided in ORS 292.495.

5 (7) The commission may retain or appoint qualified legal counsel who must be a member of the
6 Oregon State Bar and who is responsible to the commission. The appointment of legal counsel under
7 this subsection may be made only when the commission finds it is inappropriate and contrary to the
8 public interest for the office of the Attorney General to represent concurrently more than one public
9 official or agency in any matter before the commission because the representation:

10 (a) Would create or tend to create a conflict of interest; and

11 (b) Is not subject to ORS 180.230 or 180.235.

12 (8) The Attorney General may not represent before the commission any state public official who
13 is the subject of any complaint or action of the commission at the commission's own instigation.

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

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

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

20 (B) ORS 192.610 to 192.705, **except that a complaint of a violation of ORS 192.630 may be**
21 **made only if the complaint alleges that the violation of ORS 192.630 was intentional.** The
22 complaint shall state the particulars of meetings of a governing body that were not in compliance
23 with ORS 192.610 to 192.705 and shall state the person's reason for believing that a violation oc-
24 curred. The person shall include any evidence relating to the alleged violation with the complaint.

25 (b) If at any time the commission has reason to believe that there has been a violation of a
26 provision of this chapter or ORS 192.660 or a rule adopted by the commission under this chapter,
27 the commission may proceed under this section on its own motion as if the commission had received
28 a complaint.

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

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

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

41 (d) Information that the commission considers before approving a motion to proceed on its own
42 motion under this section and any correspondence regarding the motion or potential violation is
43 confidential. The executive director of the commission and the commission members and staff may
44 not make any public comment or publicly disclose any materials relating to the motion pending the
45 commission's approval to proceed. A person who intentionally violates this paragraph is subject to

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

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

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

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

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

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

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

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

45 (D) All case related materials and proceedings shall be open to the public after the commission

1 makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion.

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

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

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

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

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

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

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

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

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

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

- 1 (A) Dismissal, with or without comment;
- 2 (B) Continuation of the investigation for a period not to exceed 30 days for the purpose of ad-
- 3 ditional fact-finding;
- 4 (C) Moving to a contested case proceeding;
- 5 (D) Entering into a negotiated settlement; or
- 6 (E) Taking other appropriate action if justified by the findings.
- 7 (e) The commission may move to a contested case proceeding if the commission determines that
- 8 the information presented to the commission is sufficient to make a preliminary finding of:
 - 9 (A) A violation of any provision of this chapter or of any rule adopted by the commission under
 - 10 this chapter; or
 - 11 (B) A violation of any provision of ORS 192.610 to 192.705, **excluding a violation of ORS**
 - 12 **192.630 for which the commission determines that there is sufficient information to find that**
 - 13 **the violation was not committed with intentional disregard of the law or willful misconduct.**
- 14 (7) A person conducting any inquiry or investigation under this section shall:
 - 15 (a) Conduct the inquiry or investigation in an impartial and objective manner; and
 - 16 (b) Provide to the executive director or the commission all favorable and unfavorable informa-
 - 17 tion the person collects.
- 18 (8) The commission shall report the findings of any inquiry or investigation in an impartial
- 19 manner. The commission shall report both favorable and unfavorable findings and shall make the
- 20 findings available to:
 - 21 (a) The person who is the subject of the inquiry or investigation;
 - 22 (b) The appointing authority, if any;
 - 23 (c) The Attorney General, if the findings relate to a state public official;
 - 24 (d) The appropriate district attorney, if the findings relate to a local public official;
 - 25 (e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge; and
 - 26 (f) The governing body of a public body, if the inquiry or investigation concerns an alleged vi-
 - 27 olation of ORS 192.610 to 192.705 and the person who is the subject of the inquiry or investigation
 - 28 is a member of that governing body.
- 29 (9) Hearings conducted under this chapter must be held before an administrative law judge as-
- 30 signed from the Office of Administrative Hearings established under ORS 183.605. The procedure
- 31 shall be that for a contested case under ORS chapter 183.
- 32 (10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct
- 33 that occurred more than four years before a complaint is filed or a motion is approved under sub-
- 34 section (1) of this section.
- 35 (11) This section does not prevent the commission and the person alleged to have violated any
- 36 provision of this chapter or ORS 192.660 or any rule adopted by the commission under this chapter
- 37 from stipulating to a finding of fact concerning the violation and consenting to an appropriate pen-
- 38 alty. The commission shall enter an order based on the stipulation and consent.
- 39 (12) At any time during proceedings conducted under this section, the commission may enter
- 40 into a negotiated settlement with the person who is the subject of action under this section.
- 41 (13) As used in this section:
 - 42 (a) "Cause" means that there is a substantial, objective basis for believing that an offense or
 - 43 violation may have been committed and the person who is the subject of an inquiry may have com-
 - 44 mitted the offense or violation.
 - 45 (b) "Governing body" has the meaning given that term in ORS 192.610.

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

5 **SECTION 6.** ORS 244.270 is amended to read:

6 244.270. (1) If the Oregon Government Ethics Commission finds that an appointed public official
 7 has violated any provision of this chapter or any rule adopted under this chapter, or has violated
 8 any provision of ORS 192.610 to 192.705 with intentional disregard of the law or willful misconduct,
 9 the finding is prima facie evidence of unfitness where removal is authorized for cause either by law
 10 or pursuant to section 6, Article VII (Amended) of the Oregon Constitution.

11 (2) If the commission finds that a public official has violated any provision of this chapter or
 12 any rule adopted under this chapter, or has violated any provision of ORS 192.610 to 192.705, **ex-**
 13 **cluding any violation of ORS 192.630 that the commission finds was not committed with in-**
 14 **tentional disregard of the law or willful misconduct**, the commission shall notify the public body,
 15 as defined in ORS 174.109, that the public official serves. The notice shall describe the violation and
 16 any action taken by the commission. The commission shall provide the notice not later than 10
 17 business days after the date the commission takes final action against the public official.

18 **SECTION 7.** ORS 244.290 is amended to read:

19 244.290. (1) The Oregon Government Ethics Commission shall:

20 (a) Prescribe forms for statements required by this chapter and provide the forms to persons
 21 required to file the statements under this chapter or pursuant to a resolution adopted under ORS
 22 244.160.

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

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

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

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

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

33 (2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to
 34 171.785, 171.992 and 192.610 to 192.705 and this chapter, including rules to:

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

37 (b) Exempt a public official who is otherwise required to file a statement pursuant to ORS
 38 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions
 39 of the body over which the public official has jurisdiction are so few or infrequent as not to warrant
 40 the public disclosure;

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

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

45 (e) Establish a procedure under which the commission shall conduct accuracy audits of a sample

1 of reports or statements filed with the commission under this chapter or ORS 171.725 to 171.785;

2 (f) Describe the application of provisions exempting items from the definition of “gift” in ORS
3 244.020;

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

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

7 (3) The commission may adopt rules that:

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

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

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

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

19 (4) Not less frequently than once each calendar year, the commission shall:

20 (a) Consider adoption of rules the commission deems necessary to implement or interpret pro-
21 visions of this chapter relating to issues the commission determines are of general interest to public
22 officials or candidates or that are addressed by the commission or by commission staff on a recur-
23 ring basis; and

24 (b) Review rules previously adopted by the commission to determine whether the rules have
25 continuing applicability or whether the rules should be amended or repealed.

26 (5) The commission shall adopt by rule an electronic filing system under which statements re-
27 quired to be filed under ORS 244.050 and 244.217 must be filed, without a fee, with the commission
28 in an electronic format.

29 (6) The commission shall make available in a searchable format for review by the public using
30 the Internet:

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

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

33 (c) Findings issued by the commission under ORS 244.260 in instances where the commission
34 determines that there has been a violation of a provision of this chapter or ORS 192.660 or any rule
35 adopted by the commission under this chapter **or an intentional violation of ORS 192.630**. Nothing
36 in this paragraph requires the commission to make publicly available materials that are otherwise
37 exempt from public disclosure or that are required to be kept confidential by the commission; and

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

42 **SECTION 8.** ORS 244.350 is amended to read:

43 244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-
44 ceed:

45 (a) Except as provided in paragraphs (b), (c) and (d) of this subsection, \$5,000 for violation of

1 any provision of this chapter or any resolution adopted under ORS 244.160.

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

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

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

6 (2)(a) Except as provided in [*paragraph (b)*] **paragraphs (b) and (c)** of this subsection, the
7 commission may impose civil penalties not to exceed \$1,000 for violation of any provision of ORS
8 192.610 to 192.705.

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

11 **(c) A civil penalty may not be imposed under this subsection for a violation of ORS**
12 **192.630 found by the commission not to have been committed with intentional disregard of**
13 **the law or willful misconduct.**

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

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

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

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

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

29 (6)(a) A civil penalty imposed under this section for a violation of ORS 192.610 to 192.705 is a
30 personal liability of each member of the governing body on whom the penalty is imposed and may
31 not be paid for or indemnified by the governing body or public body that the member is associated
32 with.

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