



## MEMORANDUM

DATE: March 24, 2025

TO: Senate Committee on Education

FROM: Susan Myers, Executive Director *SM*  
Oregon Government Ethics Commission

SUBJECT: Senate Bill 472

Under the Government Ethics Laws in Chapter 244, a conflict of interest exists when a public official makes a decision or recommendation, or takes action, that would or could have a financial impact, positive or negative, on the public official, their relatives, or on any business with which they or their relatives are associated. [ORS 244.020(1) and (13)].

ORS 244.120(2) sets forth the conflict of interest disclosure requirements for elected public officials, such as school board members. Each time a matter comes up for which they have a conflict of interest, they are required to make a public announcement of the nature of their conflict of interest. If it is a potential conflict of interest, they can then participate in the matter and may vote. If it is an actual conflict of interest, they must refrain from any participation in the matter and may not vote.

When a governing body cannot take action on a matter because too many members have actual conflicts, the minimum vote exception allows one or more of the members with actual conflicts to participate in the vote, but not in any discussion or debate on the matter. [ORS 244.120(2)(b)(B)]. This exception ensures that a governing body can legally transact business while still providing public transparency as to the limited participation of those members with actual conflicts of interest.

Our concerns with SB 472 and its implementation are as follows:

- Subsection (1) could make it impossible for a school board to legally transact business. If enough members of a school board have actual conflicts of interest, and they are not permitted to use the minimum votes exception, that means the school board cannot legally transact any business.

For example, a seven-member school board could have four members with actual conflicts of interest when adopting a budget because they have relatives that work at the district. Under SB 472, because the minimum votes exception would not apply, these four members could not vote, even after announcing their actual conflicts of interest. As a result, the school board would be unable to adopt its budget.

- Subsections (2) and (3) permit the education service district board and then the State Board of Education to determine whether a school board has violated subsection (1). This raises the following concerns:
  - The Ethics Laws in ORS Chapter 244 make it the responsibility of each individual public official (not the public body) to determine whether they have a conflict of interest and to make the appropriate conflict disclosures.
  - ORS 244.260 already provides a process for the Government Ethics Commission to accept complaints, investigate violations, and make final determinations as to violations of the conflicts of interest statutes.
  - SB 472 could result in conflicting determinations. The ESD or the State Board of Education may conclude that a school board member has an actual conflict of interest, but OGEC could reach a contrary determination, finding that the school board member's conflict was only potential, or perhaps that the school board member had no conflict of interest at all.

The potential for conflicting determinations may cause confusion among school board members and other public officials. Resolving these conflicting determinations would require litigation in each case.

- Subsection (4) provides that a school board member's failure to comply with subsection (1) may result in a civil penalty imposed under ORS 244.350 and may be cause for a decision or action to be voided.

Please note that civil penalties under ORS 244.350 can only be imposed by the Ethics Commission, following completion of an investigation by OGEC. And the Ethics Commission has no authority to void the decisions or actions of another governing body.