

# House Bill 4159

Sponsored by COMMITTEE ON RULES (at the request of Oregon Government and Ethics Commission Workgroup)

## 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 says that the Governor has to put a person with a certain background on the OGE. The Act protects certain protected words during investigations by the OGE. (Flesch Readability Score: 60.8).

Provides that the Governor shall appoint one member of the Oregon Government Ethics Commission who has local government experience.

Provides that attorney-client privilege is not waived when a communication is made to the commission for purposes of providing information regarding a complaint alleging a violation of government ethics laws or public meetings laws.

## A BILL FOR AN ACT

Relating to the Oregon Government Ethics Commission; amending ORS 40.225 and 244.250.

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

**SECTION 1.** ORS 244.250 is amended to read:

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

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

(b) The Governor shall appoint one member, without leadership recommendation, **who has experience in local government**.

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

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

(4) The commission shall elect a chairperson and vice chairperson for such terms and duties as the commission may require.

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

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

(7) The commission may retain or appoint qualified legal counsel who must be a licensee of the Oregon State Bar and who is responsible to the commission. The appointment of legal counsel under

**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 this subsection may be made only when the commission finds it is inappropriate and contrary to the  
 2 public interest for the office of the Attorney General to represent concurrently more than one public  
 3 official or agency in any matter before the commission because the representation:

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

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

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

8 **SECTION 2.** ORS 40.225 is amended to read:

9 40.225. (1) As used in this section, unless the context requires otherwise:

10 (a) "Client" means:

11 (A) A person, public officer, corporation, association or other organization or entity, either  
 12 public or private, who is rendered professional legal services by a law practitioner, or who consults  
 13 a law practitioner with a view to obtaining professional legal services from the law practitioner.

14 (B) A person, public officer, corporation, association or other organization or entity, either  
 15 public or private, who consults a legal referral service with a view to obtaining professional legal  
 16 services from a law practitioner.

17 (b) "Confidential communication" means a communication not intended to be disclosed to third  
 18 persons other than those to whom disclosure is in furtherance of the rendition of professional legal  
 19 services to the client or those reasonably necessary for the transmission of the communication.

20 (c) "Law practitioner" means a person authorized, or reasonably believed by the client to be  
 21 authorized, to practice law in any state or nation.

22 (d) "Legal referral service" means an entity that, as a regular part of its business, refers po-  
 23 tential clients to law practitioners, including but not limited to a public nonprofit entity sponsored  
 24 or operated by the Oregon State Bar.

25 (e) "Representative of the client" means:

26 (A) A principal, an officer or a director of the client; or

27 (B) A person who has authority to obtain professional legal services, or to act on legal advice  
 28 rendered, on behalf of the client, or a person who, for the purpose of effectuating legal represen-  
 29 tation for the client, makes or receives a confidential communication while acting in the person's  
 30 scope of employment for the client.

31 (f) "Representative of the law practitioner" means one employed to assist the law practitioner  
 32 in the rendition of professional legal services, but does not include a physician making a physical  
 33 or mental examination under ORCP 44.

34 (2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing  
 35 confidential communications made for the purpose of facilitating the rendition of professional legal  
 36 services to the client:

37 (a) Between the client or the client's representative and the client's law practitioner or a rep-  
 38 resentative of the law practitioner;

39 (b) Between the client's law practitioner and the law practitioner's representative or the client's  
 40 legal referral service;

41 (c) By the client or the client's law practitioner to a law practitioner representing another in  
 42 a matter of common interest;

43 (d) Between representatives of the client or between the client and a representative of the cli-  
 44 ent;

45 (e) Between law practitioners representing the client; or

1 (f) Between the client or a representative of the client and a legal referral service.

2 (3) The privilege created by this section may be claimed by the client, a guardian or conservator  
3 of the client, the personal representative of a deceased client, or the successor, trustee, or similar  
4 representative of a corporation, association, or other organization, whether or not in existence. The  
5 person who was the law practitioner or legal referral service or the law practitioner's represen-  
6 tative at the time of the communication is presumed to have authority to claim the privilege but  
7 only on behalf of the client.

8 (4) There is no privilege under this section:

9 (a) If the services of the law practitioner or legal referral service were sought or obtained to  
10 enable or aid anyone to commit or plan to commit what the client knew or reasonably should have  
11 known to be a crime or fraud;

12 (b) As to a communication relevant to an issue between parties who claim through the same  
13 deceased client, regardless of whether the claims are by testate or intestate succession or by inter  
14 vivos transaction;

15 (c) As to a communication relevant to an issue of breach of duty by the law practitioner or legal  
16 referral service to the client or by the client to the law practitioner or legal referral service;

17 (d) As to a communication relevant to an issue concerning an attested document to which the  
18 law practitioner or legal referral service is an attesting witness; or

19 (e) As to a communication relevant to a matter of common interest between two or more clients  
20 if the communication was made by any of them to a law practitioner retained or consulted in com-  
21 mon, when offered in an action between any of the clients.

22 (5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-  
23 cation made to the Oregon Public Defense Commission for the purpose of seeking preauthorization  
24 for or payment of fees or expenses under ORS 135.055.

25 (6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained  
26 under this section for a communication that is made to the Oregon Public Defense Commission for  
27 the purpose of making, or providing information regarding, a complaint against a law practitioner  
28 providing public defense services.

29 (7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-  
30 cation ordered to be disclosed under ORS 192.311 to 192.478.

31 **(8) Notwithstanding ORS 40.280, a privilege is maintained under this section for a com-**  
32 **munication made to the Oregon Government Ethics Commission for the purpose of providing**  
33 **information regarding a complaint being adjudicated under ORS 244.260.**