

House Bill 4177

Sponsored by COMMITTEE ON RULES (at the request of Representative Nathan Sosa)

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 changes how officials may talk outside of public meetings. The Act changes how OGEC oversees and trains on the public meetings law. The Act changes how governing bodies and public bodies may cure public meetings law violations. The Act takes effect 91 days after session ends. (Flesch Readability Score: 62.4).

Restates the serial communications prohibitions for public meetings law purposes. Identifies the types of communications between governing body members that are excluded from public meetings requirements.

Clarifies that public meetings may be held in person, through use of electronic means or in a hybrid format of in-person and electronic means.

Requires public meetings law complainants to provide specified documentation to the Oregon Government Ethics Commission before complaints are considered filed. Requires complainants to proceed in court if the complaint alleges a public meetings law violation by one or more members of the commission.

Modifies requirements concerning which public officials must attend public meetings law training and when those officials must attend the training.

Directs the commission to proceed against a public body, in lieu of a public official associated with a public body, if a complaint or a commission motion alleges that the violation constitutes administrative error.

Establishes methods by which governing bodies and public bodies may cure public meetings law violations under certain circumstances.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to public meetings; amending ORS 192.610, 192.630, 192.670, 192.685, 192.690, 192.700, 192.705, 244.260 and 244.350; and prescribing an effective date.

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

SECTION 1. ORS 192.610 is amended to read:

192.610. As used in ORS 192.610 to 192.705:

(1) "Convening" means:

(a) Gathering in a physical location; **or**

(b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants[;].

[(c) *Using serial electronic written communication among participants; or*]

[(d) *Using an intermediary to communicate among participants.*]]

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

(3) "Deliberation" means discussion or communication [*that is part of a decision-making process*] **in which the members of a governing body examine, weigh or reflect upon the reasons for or against a decision that is subject to the jurisdiction of the governing body.**

(4) "Executive session" means any meeting or part of a meeting of a governing body that is

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 closed to certain persons for deliberation on certain matters.

2 (5) "Governing body" means the members of any public body that consists of two or more
3 members, with the authority to make decisions for or recommendations to a public body on policy
4 or administration.

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

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

10 (7) "Public body" means the state, any regional council, county, city or district, or any municipal
11 or public corporation, or any board, department, commission, council, bureau, committee or sub-
12 committee or advisory group or any other agency thereof.

13 **SECTION 2.** ORS 192.630 is amended to read:

14 192.630. (1) All meetings of the governing body of a public body shall be open to the public and
15 all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610
16 to 192.705.

17 (2) A quorum of a governing body may not meet in private **or use a series of communications**
18 **of any kind, either directly or through intermediaries**, for the purpose of:

19 (a) Deciding on or deliberating toward a decision on any matter except as otherwise provided
20 by ORS 192.610 to 192.705; **or**

21 (b) **Circumventing the requirements of subsection (1) of this section.**

22 (3) A governing body may not hold a meeting at any place where discrimination on the basis
23 of race, color, creed, sex, sexual orientation, gender identity, national origin, age or disability is
24 practiced. However, the fact that organizations with restricted membership hold meetings at the
25 place does not restrict its use by a public body if use of the place by a restricted membership or-
26 ganization is not the primary purpose of the place or its predominant use.

27 (4)(a) Meetings of the governing body of a public body shall be held:

28 (A) Within the geographic boundaries over which the public body has jurisdiction;

29 (B) At the administrative headquarters of the public body;

30 (C) At the nearest practical location; **or**

31 (D) If the public body is a state, county, city or special district entity, within Indian country of
32 a federally recognized Oregon Indian tribe that is within the geographic boundaries of this state.
33 For purposes of this subparagraph, "Indian country" has the meaning given that term in 18 U.S.C.
34 1151.

35 (b) Training sessions may be held outside the jurisdiction as long as no deliberations toward a
36 decision are involved.

37 (c) A joint meeting of two or more governing bodies or of one or more governing bodies and the
38 elected officials of one or more federally recognized Oregon Indian tribes shall be held within the
39 geographic boundaries over which one of the participating public bodies or one of the Oregon Indian
40 tribes has jurisdiction or at the nearest practical location.

41 (d) Meetings may be held in locations other than those described in this subsection in the event
42 of an actual emergency necessitating immediate action.

43 (5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet
44 in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard
45 of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or

1 hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on
2 the basis of disability shall be as provided in ORS 192.680.

3 (b) The person requesting the interpreter shall give the governing body at least 48 hours' notice
4 of the request for an interpreter, shall provide the name of the requester, sign language preference
5 and any other relevant information the governing body may request.

6 (c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have
7 an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

8 (d) If certification of interpreters occurs under state or federal law, the Oregon Health Author-
9 ity or other state or local agency shall try to refer only certified interpreters to governing bodies
10 for purposes of this subsection.

11 (e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the
12 department or other state or local agency that maintains a list of qualified interpreters and ar-
13 ranging for the referral of one or more qualified interpreters to provide interpreter services.

14 **SECTION 3.** ORS 192.670 is amended to read:

15 192.670. (1) Any meeting, including an executive session, of a governing body of a public body
16 [*which is held through the use of telephone or other electronic communication*] shall be conducted in
17 accordance with ORS 192.610 to 192.705, **and may be held in person, through the use of elec-
18 tronic or telephonic means or in some combination of in-person, electronic or telephonic
19 means.**

20 (2) When telephone or other electronic means of communication is used and the meeting is not
21 an executive session, the governing body of the public body shall make available to the public at
22 least one place where, or at least one electronic means by which, the public can listen to the com-
23 munication at the time it occurs. A place provided may be a place where no member of the gov-
24 erning body of the public body is present.

25 (3) All meetings held by a governing body of a public body, excluding executive sessions, must
26 provide to members of the general public, to the extent reasonably possible, an opportunity to:

27 (a) Access and attend the meeting by telephone, video or other electronic or virtual means;
28 (b) If in-person oral testimony is allowed, submit during the meeting oral testimony by telephone,
29 video or other electronic or virtual means; and

30 (c) If in-person written testimony is allowed, submit written testimony, including by electronic
31 mail or other electronic means, so that the governing body is able to consider the submitted testi-
32 mony in a timely manner.

33 (4) The provisions of subsection (3) of this section:

34 (a) Apply to hearings under ORS 197.797, 215.402 to 215.438 and 215.700 to 215.780 regardless
35 of whether a governing body or governing body's designee, including a hearings officer, conducts the
36 hearing; and

37 (b) Do not apply to contested case hearings under ORS chapter 183.

38 **SECTION 4.** ORS 192.685 is amended to read:

39 192.685. (1)(a) Notwithstanding ORS 192.680, complaints of violations of any provision of ORS
40 192.610 to 192.705 alleged to have been committed by public officials may be made to the Oregon
41 Government Ethics Commission for review and investigation as provided by ORS 244.260 and for
42 possible imposition of civil penalties as provided by ORS 244.350.

43 (b) If at any time the commission has reason to believe that there has been a violation of ORS
44 192.660, the commission may proceed under this section and as provided by ORS 244.260 on its own
45 motion as if the commission had received a complaint.

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

3 (a) Has received a response from the public body that denies that a violation of ORS 192.610 to
4 192.705 occurred;

5 (b) Has received a response from the public body that admits that a violation of ORS 192.610 to
6 192.705 occurred that the public body has failed to take adequate steps to cure; or

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

9 (3) A complainant shall submit documentation of the complainant's actions taken under ORS
10 192.705 and the public body's response as described in subsection (2) of this section, if any. **Except**
11 **as provided under subsection (1)(b) of this section**, the commission *[shall dismiss any complaint*
12 *filed under this section that does not satisfy]* **may not consider a complaint to be filed under this**
13 **section if the complainant has not satisfied** the requirements of subsection (2) of this section.

14 (4) If a complaint satisfies the requirements of subsection (2) of this section, the commission may
15 interview witnesses, review minutes and other records and obtain and consider any other information
16 pertaining to meetings of the governing body of a public body for purposes of determining
17 whether a violation of ORS 192.610 to 192.705 occurred. Information related to an executive session
18 conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government
19 Ethics Commission for its investigation but shall be excluded from public disclosure.

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

24 (6) **This section does not apply to any complaint of a violation of any provision of ORS**
25 **192.610 to 192.705 alleged to have been committed by one or more members of the commission.** The exclusive remedy for a complaint described in this subsection is to proceed under
26 **ORS 192.680.**

27 **SECTION 5.** ORS 192.690 is amended to read:

28 192.690. (1) ORS 192.610 to 192.705 do not apply to any of the following:

29 (a) Deliberations of the Psychiatric Security Review Board or the State Board of Parole and
30 Post-Prison Supervision.

31 (b) Deliberations of state agencies conducting hearings on contested cases in accordance with
32 the provisions of ORS chapter 183.

33 (c) Deliberations of the Workers' Compensation Board or the Employment Appeals Board of
34 similar hearings on contested cases.

35 (d) Meetings of the state lawyers assistance committee operating under the provisions of ORS
36 9.568.

37 (e) Meetings of the personal and practice management assistance committees operating under
38 the provisions of ORS 9.568.

39 (f) Meetings of county child abuse multidisciplinary teams required to review child abuse cases
40 in accordance with the provisions of ORS 418.747.

41 (g) Meetings of child fatality review teams required to review child fatalities in accordance with
42 the provisions of ORS 418.785.

43 (h) Meetings of peer review committees in accordance with the provisions of ORS 441.055.

1 (i) Mediation conducted under ORS 36.252 to 36.268.
2 (j) Any judicial proceeding.
3 (k) Meetings of the Oregon Health and Science University Board of Directors or its designated
4 committee regarding candidates for the position of president of the university or regarding sensitive
5 business, financial or commercial matters of the university not customarily provided to competitors
6 related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposi-
7 tion of, or substantial change in use of, significant real or personal property, or related to health
8 system strategies.
9 (L) Oregon Health and Science University faculty or staff committee meetings.
10 (m) Meetings of Transfer Council subcommittees that are established under ORS 350.426 and
11 that relate to the common course numbering system and the coordination, establishment, alignment,
12 effectiveness and maintenance of foundational curricula or unified statewide transfer agreements.
13 (n) Communications between or among members of a governing body that [are]:
14 [(A) *Purely factual or educational in nature and that convey no deliberation or decision on any*
15 *matter that might reasonably come before the governing body;*]
16 **(A) Are related purely to procedural matters and convey no deliberation or decision on**
17 **the substance of the matter in question;**
18 **(B) Contain only factual or educational information or that share the views of someone**
19 **other than a member of the governing body, including but not limited to published articles**
20 **or constituent letters;**
21 **(C) Are made to representatives of the news media, constituents, members of the public**
22 **or other persons, unless the persons are being used as intermediaries to allow the governing**
23 **body to engage in deliberations or make a decision;**
24 **(D) Are made for the purpose of gathering information related to a decision that will be**
25 **deliberated upon or made by the governing body;**
26 [(B)] **(E) Except as otherwise provided in this paragraph, are not related to any matter that,**
27 **at any time, could reasonably be foreseen to come before the governing body for deliberation and**
28 **decision; or**
29 [(C)] **(F) Are nonsubstantive in nature, such as communication relating to scheduling, leaves of**
30 **absence and other similar matters.**
31 (2) Because of the grave risk to public health and safety that would be posed by misappropri-
32 ation or misapplication of information considered during such review and approval, ORS 192.610 to
33 192.705 shall not apply to review and approval of security programs by the Energy Facility Siting
34 Council pursuant to ORS 469.530.

35 **SECTION 6.** ORS 192.700 is amended to read:

36 192.700. (1)(a) The Oregon Government Ethics Commission shall annually prepare training on
37 the requirements of ORS 192.610 to 192.705 and best practices to enhance compliance with those
38 requirements. The commission may delegate the preparation and presentation of trainings to another
39 organization, except that the commission must approve the content of training prepared by another
40 organization prior to presentation of the training.

41 (b) At the discretion of the commission, trainings prepared under this section may be presented
42 in live sessions or be made available for viewing online. Training sessions may be presented to
43 multiple governing bodies at any one time and may be presented in a prerecorded format.

44 (2)(a) Every member of a governing body [*of a public body with total expenditures for a fiscal year*
45 *of \$1 million or more*] shall attend or view training prepared under this section at least once during

1 the member's term of office and shall verify the member's attendance using the method prescribed
 2 by the commission, **if:**

3 **(A) The public body that the governing body governs has total expenditures for a fiscal
 4 year of \$1 million or more; and**

5 **(B) The governing body has decision-making authority over the public body on questions
 6 of policy or administration. For purposes of this paragraph, a governing body has authority
 7 to make decisions on policy or administration if the governing body may exercise govern-
 8 mental power on behalf of the public body.**

9 **(b) A member of a governing body that only has authority to make recommendations to
 10 a public body on policy or administration is not required to attend training under this sec-
 11 tion.**

12 **[(b)] (c) A member of a governing body who[, under paragraph (a) of this subsection,] is not re-
 13 quired to attend training is nevertheless encouraged to attend training given under this section.**

14 (3) The commission shall, at least once every five years, adjust the expenditure threshold for
 15 mandatory training described in subsection (2)(a) of this section to account for changes in inflation
 16 and shall by rule establish a new threshold, rounded to the nearest \$100,000, for mandatory training
 17 attendance under this section.

18 **(4) A member of a governing body who is required to attend or view training under this
 19 section shall attend or view the training at any time between three months before assuming
 20 office and 12 months after taking office.**

21 **[(4)] (5) This section does not apply to governing bodies of state government, as defined in ORS
 22 174.111.**

23 **SECTION 7.** ORS 192.705 is amended to read:

24 192.705. (1) A person who believes that a governing body has acted in violation of ORS 192.610
 25 to 192.705 may, within [30] 90 days of the alleged violation, file a written grievance with the public
 26 body whose governing body is alleged to have violated ORS 192.610 to 192.705, setting forth the
 27 specific facts and circumstances that the person asserts amounted to a violation of ORS 192.610 to
 28 192.705. The grievance must state the identity of the person filing the grievance and any other in-
 29 formation required by the Oregon Government Ethics Commission by rule.

30 (2) A public body receiving a written grievance filed under this section shall, within 21 days of
 31 the receipt of the grievance, provide [a] **an initial** written response to the person[::].

32 **[(a) Acknowledging receipt of the grievance; and]**

33 **[(b)(A) Denying that the facts and circumstances as set forth in the grievance accurately reflect the
 34 conduct of the governing body and setting forth the facts and circumstances as determined by the public
 35 body and the reasons why those facts and circumstances do not amount to a violation of ORS 192.610
 36 to 192.705;]**

37 **[(B) Admitting that the facts and circumstances as set forth in the grievance accurately reflect the
 38 conduct of the governing body but denying that those facts and circumstances amount to a violation
 39 of ORS 192.610 to 192.705; or]**

40 **[(C) Admitting that the conduct of the governing body amounted to a violation of ORS 192.610 to
 41 192.705 and setting forth the steps the governing body will take to cure the violation, including but not
 42 limited to:]**

43 **[(i) Rescinding the decision taken by the governing body in violation of ORS 192.610 to 192.705;
 44 or]**

45 **[(ii) Acknowledging in a properly noticed and conducted public meeting held within 45 days of the**

1 *governing body's original decision that:]*

2 [(I) *The original decision was made in violation of ORS 192.610 to 192.705;]*

3 [(II) *Good cause exists for the governing body to not rescind the decision; and]*

4 [(III) *The governing body's practices will be modified to ensure future violations of ORS 192.610*
5 *to 192.705 do not occur.]*

6 **(3) The governing body of the public body that has received a grievance under this section**
7 **may cure a violation described in the grievance by:**

8 **(a) Rescinding the decision taken by the governing body in violation of ORS 192.610 to**
9 **192.705;**

10 **(b) Acknowledging in a properly noticed and conducted public meeting held within 90 days**
11 **of the public body's receipt of the grievance that:**

12 **(A) The original decision was made in violation of ORS 192.610 to 192.705;**

13 **(B) Good cause exists for the governing body to not rescind the decision; and**

14 **(C) The governing body's practices will be modified to ensure that future violations of**
15 **ORS 192.610 to 192.705 do not occur; or**

16 **(c) Describing some other action the governing body will take to ensure compliance with**
17 **ORS 192.610 to 192.705 and the date by which the action is to be implemented.**

18 **(4)(a) The public body that received a grievance under this section, or the governing body**
19 **of that public body, may cure a violation described in the grievance by correcting procedures**
20 **to ensure that those procedural errors that led to a violation of ORS 192.610 to 192.705 do**
21 **not occur in the future.**

22 **(b) As used in this subsection, "procedural error" means a decision by the public body**
23 **concerning:**

24 **(A) The location of a public meeting that does not comply with ORS 192.630;**

25 **(B) The content or method of publication or delivery of a public notice of a public meeting**
26 **that does not comply with ORS 192.640;**

27 **(C) The recording of, or the taking of minutes of, a public meeting that does not comply**
28 **with ORS 192.650;**

29 **(D) The determination that an executive session is to be held that does not comply with**
30 **ORS 192.660; or**

31 **(E) Any other action that is preliminary to or that follows a meeting in which a decision**
32 **on the policy or administration of a public body is made, or in which a recommendation to**
33 **a public body on policy or administration is made, and that is not in compliance with ORS**
34 **192.610 to 192.705.**

35 [(3)] **(5) The public body shall send a copy of the written grievance and the public body's re-**
36 **sponse under this section to the Oregon Government Ethics Commission at the time the public body**
37 **responds to the person who filed the grievance.**

38 **SECTION 8. ORS 244.260 is amended to read:**

39 **244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed or**
40 **electronically signed written complaint alleging that there has been a violation of either:**

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

44 **(B) ORS 192.610 to 192.705. The complaint shall state the particulars of meetings of a governing**
45 **body that were not in compliance with ORS 192.610 to 192.705 and shall state the person's reason**

1 for believing that a violation occurred. The person shall include any evidence relating to the alleged
2 violation with the complaint.

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

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

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

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

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

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

34 (b) **If the executive director determines in the Preliminary Review Phase that the com-**
35 **plaint or motion alleges an administrative error under ORS 192.610 to 192.705, the commis-**
36 **sion shall proceed against the public body in lieu of any public official associated with the**
37 **public body, and shall supply the notice required by subsection (2) of this section to the public**
38 **body within five business days of the director's determination.**

39 (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the
40 commission decides to proceed on its own motion and ends on the date the executive director com-
41 pletes the statement of the facts determined during the phase under paragraph (d) of this subsection.
42 The Preliminary Review Phase may not exceed 60 days unless a complaint is filed under this section
43 with respect to a person who is a candidate for elective public office, the complaint is filed within
44 61 days before the date of an election at which the person is a candidate for nomination or election
45 and a delay is requested in writing by the candidate. If the candidate makes a request under this

1 paragraph, the Preliminary Review Phase must be completed not later than 60 days after the date
2 of the election.

3 (b) During the Preliminary Review Phase, the executive director of the commission may seek,
4 solicit or otherwise obtain any books, papers, records, memoranda or other additional information,
5 administer oaths and take depositions necessary to determine whether there is cause to undertake
6 an investigation or whether the alleged violation involves conduct protected by Article IV, section
7 9, of the Oregon Constitution.

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

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

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

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

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

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

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

43 (b) If the commission makes a finding of cause to undertake an investigation, the commission
44 shall undertake action in the Investigatory Phase. The commission shall notify the person who is the
45 subject of the investigation, identify the issues to be examined and confine the investigation to those

1 issues. If the commission finds reason to expand the investigation, the commission shall move to do
2 so, record in its minutes the issues to be examined before expanding the scope of its investigation
3 and formally notify the complainant, if any, and the person who is the subject of the investigation
4 of the expansion and the scope of the investigation.

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

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

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

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

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

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

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

29 (A) Dismissal, with or without comment;

30 (B) Continuation of the investigation for a period not to exceed 30 days for the purpose of ad-
31 ditional fact-finding;

32 (C) Moving to a contested case proceeding;

33 (D) Entering into a negotiated settlement; or

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

35 (e) The commission may move to a contested case proceeding if the commission determines that
36 the information presented to the commission is sufficient to make a preliminary finding of:

37 (A) A violation of any provision of this chapter or of any rule adopted by the commission under
38 this chapter; or

39 (B) A violation of any provision of ORS 192.610 to 192.705.

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

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

42 (b) Provide to the executive director or the commission all favorable and unfavorable informa-
43 tion the person collects.

44 (8) The commission shall report the findings of any inquiry or investigation in an impartial
45 manner. The commission shall report both favorable and unfavorable findings and shall make the

1 findings available to:

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

3 (b) The appointing authority, if any;

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

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

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

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

8 olation of ORS 192.610 to 192.705 and the person who is the subject of the inquiry or investigation

9 is a member of that governing body **or the alleged violation is an administrative error.**

10 (9) Hearings conducted under this chapter must be held before an administrative law judge as-

11 signed from the Office of Administrative Hearings established under ORS 183.605. The procedure

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

13 (10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct

14 that occurred more than four years before a complaint is filed or a motion is approved under sub-

15 section (1) of this section.

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

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

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

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

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

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

22 (13) As used in this section:

23 (a) **“Administrative error” means, in the context of an alleged violation of ORS 192.610**

24 **to 192.705, a typographical error on an agenda, an error of Internet-linked documents, an**

25 **error in the notice given for a public meeting or a similar error, and may be further defined**

26 **by the commission by rule.**

27 [(a)] (b) “Cause” means that there is a substantial, objective basis for believing that an offense

28 or violation may have been committed and the person who is the subject of an inquiry may have

29 committed the offense or violation.

30 [(b)] (c) “Governing body” has the meaning given that term in ORS 192.610.

31 [(c)] (d) “Pending” means that a prosecuting attorney is either actively investigating the factual

32 basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument,

33 has obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of

34 negotiating a plea.

35 **SECTION 9.** ORS 244.350 is amended to read:

36 244.350. (1) The Oregon Government Ethics Commission may impose civil penalties not to ex-

37 ceed:

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

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

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

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

42 (d) Two times the amount of the penalty provision for violating a nondisclosure agreement that

43 is contained within each nondisclosure agreement entered into in violation of ORS 244.049.

44 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose civil

45 penalties not to exceed \$1,000 for violation of any provision of ORS 192.610 to 192.705.

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

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

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

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

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

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

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

22 **(b) Notwithstanding paragraph (a) of this subsection, a civil penalty imposed under this**
23 **section for an administrative error that amounts to a violation of ORS 192.610 to 192.705 is**
24 **a liability of the public body and may not be paid for by a public official associated with the**
25 **public body.**

26 [(b)] (c) As used in this subsection[,:]

27 (A) **“Administrative error” has the meaning given that term in ORS 244.260 and in rules**
28 **adopted thereunder; and**

29 (B) “Governing body” and “public body” have the meanings given those terms in ORS 192.610.

30 **SECTION 10. This 2026 Act takes effect on the 91st day after the date on which the 2026**
31 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

32
