

CHAPTER 619

AN ACT

HB 2019

Relating to the Oregon Government Ethics Commission; creating new provisions; amending ORS 244.250, 244.260 and 244.290; and declaring an emergency.

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 [*seven*] **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 [*four*] **eight** members from among persons recommended, [*one*] **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 [*three members*] **one member** without leadership recommendation. [*No more than two members appointed under this paragraph may be members of the same major political party.*]

(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 [*four*] **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 one full term but may 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 [*four*] **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 member of the Oregon State Bar and who is responsible to the commission. The appointment of legal counsel under this subsection may be made only when the commission finds it is inappropriate and contrary to the public interest for the office of the Attorney General to represent concurrently more than one public official or agency in any matter before the commission because the representation:

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

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

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

SECTION 2. ORS 244.260 is amended to read:

244.260. (1)(a) Any person may file with the Oregon Government Ethics Commission a signed written complaint alleging that there has been a violation of any provision of this chapter or of any rule adopted by the commission under this chapter. The complaint shall state the person's reason for believing that a violation occurred and include any evidence relating to the alleged violation.

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

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

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

(c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of this subsection [*by mail and by telephone if the person can be reached by telephone*]. The notice must describe the nature of the alleged violation. The [*mailed*] notice must include copies of all materials submitted with a complaint. If the commission will consider a motion to proceed without a complaint, the notice must provide copies of all materials that the commission will consider at the hearing on the motion.

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

(3) After [*receiving*] **the commission receives** a complaint or [*deciding*] **decides** to proceed on its

own motion, the **executive director of the** commission shall undertake action in the Preliminary Review Phase to determine whether there is cause to undertake an investigation. If the person who is the subject of the action is a member of the Legislative Assembly, the [commission] **executive director** shall determine whether the alleged violation involves conduct protected by **Article IV**, section 9, [Article IV] of the Oregon Constitution.

(4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the commission decides to proceed on its own motion and ends on the date the [commission determines there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion.] **executive director completes the statement of the facts determined during the phase under paragraph (d) of this subsection.** The Preliminary Review Phase may not exceed [135] **30** days unless[.]

[A] *A delay is stipulated to by both the person who is the subject of action under this section and the commission with the commission reserving a portion of the delay period to complete its actions; or*

[B] a complaint is filed under this section with respect to a person who is a candidate for elective public office, the complaint is filed within 61 days before the date of an election at which the person is a candidate for nomination or election and a delay is requested in writing by the candidate. If the candidate makes a request under this [subparagraph] **paragraph**, the Preliminary Review Phase must be completed not later than [135] **30** days [after the date of the first meeting of the commission that is held] after the date of the election.

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

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

(d)(A) **At the end of the Preliminary Review Phase, the executive director of the commission shall prepare a statement of the facts determined during the phase, including appropriate legal citations and relevant authorities. Before**

presentation to the commission, the executive director's statement shall be reviewed by legal counsel to the commission.

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

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

(D) All case related materials and proceedings shall be open to the public after the commission makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion. [Prior to the end of the Preliminary Review Phase, the executive director of the commission shall prepare a statement of the facts determined during the phase, including appropriate legal citations and relevant authorities. Before presentation to the commission, the executive director's statement shall be reviewed by legal counsel to the commission.]

(e) The time limit imposed in this subsection and the commission's inquiry are suspended if[.]

[A] *There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission unless the parties stipulate otherwise; or*

[B] a court has enjoined the **executive director or the** commission from continuing [its] the inquiry.

(5)(a) If the commission determines that there is not cause to undertake an investigation or that the alleged violation of this chapter involves conduct protected by **Article IV**, section 9, [Article IV] of the Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and formally enter the dismissal or rescission in its records. **If the commission considers the recommendation of the executive director in an executive session but the commission does not affirmatively vote to undertake an investigation, dismiss the complaint or rescind its motion, the nonaction taken by the commission shall be considered a dismissal of the complaint or a rescission of its motion.** The commission shall notify the person who is the subject of action under this section of the dismissal or rescission. After dismissal or rescission, the commission may not take further action involving the person unless a new and different complaint is filed or action on the

commission's own motion is undertaken based on different conduct.

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

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

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

(c) The time limit imposed in this subsection and the commission's investigation [*are suspended if*]:

(A) **May be suspended if** there is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission **and the commission determines that it cannot adequately complete its investigation until the pending criminal investigation is complete** [*unless the parties stipulate otherwise*]; or

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

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

(A) Dismissal, with or without comment;

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

(C) Moving to a contested case proceeding;

(D) Entering into a negotiated settlement; or

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

(e) The commission may move to a contested case proceeding if the commission determines that the information presented to the commission is sufficient to make a preliminary finding of a violation of any provision of this chapter or of any rule adopted by the commission under this chapter.

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

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

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

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

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

(b) The appointing authority, if any;

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

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

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

(9) Hearings conducted under this chapter must be held before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. The procedure shall be that for a contested case under ORS chapter 183.

(10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct that occurred more than four years before a complaint is filed or a motion is approved under subsection (1) of this section.

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

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

(13) As used in this section:

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

(b) "Pending" means that a prosecuting attorney is either actively investigating the factual basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of negotiating a plea.

SECTION 3. ORS 244.290, as amended by section 9d, chapter 877, Oregon Laws 2007, and section 14, chapter 68, Oregon Laws 2009, is amended to read:

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

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

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

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

[(d) *Make advisory opinions issued by the commission or the executive director of the commission available to the public at no charge on the Internet.*]

[(e)] (d) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter.

[(f)] (e) Make statements and other information filed with the commission available for public inspection and copying during regular office hours, and make copying facilities available at a charge not to exceed actual cost.

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

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

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

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

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

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

(e) Establish a procedure under which the commission shall conduct accuracy audits of a sample of reports or statements filed with the commission under this chapter or ORS 171.725 to 171.785;

(f) Describe the application of provisions exempting items from the definition of "gift" in ORS 244.020;

(g) Specify when a continuing violation is considered a single violation or a separate and distinct violation for each day the violation occurs; and

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

(3) The commission may adopt rules that:

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

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

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

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

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

(a) Consider adoption of rules the commission deems necessary to implement or interpret provisions of this chapter relating to issues the commission determines are of general interest to public officials or candidates or that are addressed by the commission or by commission staff on a recurring basis; and

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

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

(6) The commission shall make [*statements filed under ORS 244.050 and 244.217*] available in a searchable format for review by the public using the Internet:

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

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

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

SECTION 4. (1) The amendments to ORS 244.250 by section 1 of this 2015 Act become operative on July 1, 2016.

(2) The amendments to ORS 244.260 by section 2 of this 2015 Act apply to complaints filed on or after the effective date of this 2015 Act.

(3) The amendments to ORS 244.290 by section 3 of this 2015 Act become operative on January 1, 2017.

SECTION 5. (1) Notwithstanding any other law limiting expenditures, the amount of \$255,076 is established for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses for administration from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in this subsection, collected or received by the Oregon Government Ethics Commission.

(2) Notwithstanding any other law limiting expenditures, the amount of \$200,000 is established for the biennium beginning July 1, 2015,

as the maximum limit for payment of expenses for an electronic case management system from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in this subsection, collected or received by the Oregon Government Ethics Commission.

SECTION 6. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Approved by the Governor July 1, 2015
Filed in the office of Secretary of State July 2, 2015
Effective date July 1, 2015