

A-Engrossed
House Bill 4085

Ordered by the House February 19
Including House Amendments dated February 19

Sponsored by Representative RAYFIELD (Pre-session filed.)

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.

Lowers threshold for required filing of statement of independent expenditures to [~~\$50~~] **\$250** per calendar year and requires statement to be filed within [~~five~~] **seven** days [~~of reaching threshold~~] **after expenditure is made.**

Increases penalties **from 10 percent to 40 percent of total amount of contribution or expenditure for failure to file required statements or certificates, for failure to include required information in statements or certificates,** for incorrectly identifying expenditure as independent expenditure[, *failing to timely file accurate statements of independent expenditures*] and **for** failing to timely file accurate statements for in-kind contributions.

Requires person making independent expenditures of more than \$250 in calendar year to maintain detailed accounts that are current not later than seven days after triggering required report. Requires account records to be kept for at least two years.

Requires Secretary of State to conduct spot checks of statements of independent expenditures.

Requires secretary to randomly select for examination accounts of political committees. Requires that examinations occur four times per calendar year and determine whether committee accurately and timely complied with filing requirements during three months immediately preceding examination.

Permits secretary or Attorney General, upon reasonable suspicion of violation, to examine accounts of person, political committee or petition committee being investigated as result of elector filing complaint alleging violation of election law or rule.

Permits Attorney General, during investigation of election complaint, to issue subpoena to compel production of relevant documents or information.

[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to campaign finance; creating new provisions; and amending ORS 260.044, 260.055, 260.200,
3 260.218, 260.232 and 260.345.

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

5 **SECTION 1.** ORS 260.044 is amended to read:

6 260.044. (1) If a person makes independent expenditures in a total amount of more than [~~\$750~~]
7 **\$250** in a calendar year, the person shall use the electronic filing system adopted under ORS 260.057
8 to file with the Secretary of State a statement of independent expenditures not later than seven
9 calendar days after the total amount of independent expenditures exceeds [~~\$750~~] **\$250** in a calendar
10 year.

11 (2) A person who files a statement of independent expenditures under subsection (1) of this
12 section shall use the electronic filing system adopted under ORS 260.057 to file with the secretary
13 additional statements of independent expenditures made by the person, as described in ORS 260.083.

14 (3) Except as provided in [~~subsections~~] **subsection (4) [and (5)]** of this section, a person shall file
15 a statement described in subsection (2) of this section not later than [~~30~~] **seven** calendar days after
16 an independent expenditure is made.

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 [(4)(a) A person shall file a statement described in subsection (2) of this section not later than seven
2 calendar days after an independent expenditure is made. This paragraph applies to independent
3 expenditures made:]

4 [(A) During the period beginning on the 42nd calendar day before the date of any primary election
5 and ending on the date of the primary election; and]

6 [(B) During the period beginning on the 42nd calendar day before the date of any general election
7 and ending on the date of the general election.]

8 [(b) If the person makes an independent expenditure prior to the 42nd calendar day before the date
9 of the primary or general election and the person has not filed a statement under subsection (3) of this
10 section by the 43rd calendar day before the date of the primary or general election, the person shall file
11 a statement described in subsection (2) of this section not later than the 35th calendar day before the
12 date of the primary or general election.]

13 [(5)] (4) For any special election, the secretary by rule may establish a period during which a
14 person must file a statement described in subsection (2) of this section. The period may not extend
15 beyond seven calendar days after an independent expenditure is made.

16 [(6)] (5) Notwithstanding ORS 260.005 (18), a person who solicits and receives a contribution or
17 contributions is a political committee and shall file a statement of organization under ORS 260.042
18 and the statements required by ORS 260.057, 260.076 or 260.078.

19 [(7)] (6) For purposes of this section:

20 (a) An independent expenditure does not include a contribution to a candidate or political
21 committee that is required to report the contribution on a statement filed under ORS 260.057,
22 260.076 or 260.078 or a certificate filed under ORS 260.112;

23 (b) An independent expenditure does not include a contribution to a candidate who is not re-
24 quired to file a statement of organization under ORS 260.043; and

25 (c) A person is not a political committee under subsection [(6)] (5) of this section if all contri-
26 butions received by the person are:

27 (A) Designated to an identified candidate or political committee;

28 (B) Delivered by the person to the designated candidate or political committee not later than
29 seven business days after the contribution is received; and

30 (C) Required to be reported as contributions by a candidate or political committee on a state-
31 ment filed under ORS 260.057, 260.076 or 260.078 or a certificate filed under ORS 260.112.

32 **SECTION 2.** ORS 260.232 is amended to read:

33 260.232. (1) The Secretary of State may impose a civil penalty as provided in this section, in
34 addition to any other penalty that may be imposed, for:

35 (a) Failure to file a statement or certificate required to be filed under ORS 260.044, 260.057,
36 260.076, 260.078, 260.083, 260.112 or 260.118.

37 (b) Failure to include in a statement filed under ORS 260.044, 260.057, 260.076, 260.078, 260.083,
38 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076, 260.083 or 260.118.

39 (c) **Incorrectly identifying as an independent expenditure an expenditure that was made**
40 **with the cooperation or with the prior consent of, or in consultation with, or at the request**
41 **or suggestion of, a candidate or any agent or authorized committee of the candidate, or any**
42 **political committee or agent of a political committee supporting or opposing a measure.**

43 (2)(a) If a person required to file has not filed [a] **an accurate** statement or certificate comply-
44 ing with applicable provisions of ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.085, 260.112 or
45 260.118 within the time specified in ORS 260.044, 260.057, 260.076, 260.078 or 260.118, the Secretary

1 of State by first class mail shall notify the person that a penalty may be imposed and that the person
2 has 20 days from the service date on the notice to request a hearing before the Secretary of State.

3 (b) If the person required to file is a candidate or the principal campaign committee of a candi-
4 dicate, the Secretary of State shall send the notice described in paragraph (a) of this subsection by
5 first class mail to the candidate. The notice shall be used for purposes of determining the deadline
6 for requesting a hearing under subsection (3) of this section.

7 (3) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation
8 shall be held by the Secretary of State:

9 (a) Upon request of the person against whom the penalty may be assessed, if the request is made
10 not later than the 20th day after the person received the notice sent under subsection (2) of this
11 section;

12 (b) Upon request of the filing officer with whom a statement or certificate was required to be
13 filed but was not filed; or

14 (c) Upon the Secretary of State's own motion.

15 (4) A hearing under subsection (3) of this section shall be held not later than 45 days after the
16 deadline for the person against whom the penalty may be assessed to request a hearing. However,
17 if requested by the person against whom the penalty may be assessed, a hearing under subsection
18 (3) of this section shall be held not later than 60 days after the deadline for the person against whom
19 the penalty may be assessed to request a hearing.

20 (5) The Secretary of State shall issue an order not later than 90 days after a hearing or after
21 the deadline for requesting a hearing if no hearing is held.

22 (6) The person against whom a penalty may be assessed need not appear in person at a hearing
23 held under this section, but instead may submit written testimony and other evidence, subject to the
24 penalty for false swearing, to the Secretary of State for entry in the hearing record. The testimony
25 and other evidence must be received by the secretary not later than three business days before the
26 day of the hearing and may be submitted electronically.

27 (7) A civil penalty imposed under this section may not be more than the following:

28 (a) For failure to file a statement or certificate required to be filed under ORS 260.044, 260.057,
29 260.076, 260.078, 260.083, 260.112 or 260.118, [10] 40 percent of the total amount of the contribution
30 or expenditure required to be included in the statement or certificate; [or]

31 (b) For each failure to include in a statement filed under ORS 260.044, 260.057, 260.076, 260.078,
32 260.083, 260.112 or 260.118 the information required under ORS 260.044, 260.057, 260.076, 260.083 or
33 260.118, [10] 40 percent of the total amount of the contribution or expenditure required to be in-
34 cluded in the statement[.];

35 (c) **For each instance of incorrectly identifying as an independent expenditure an ex-**
36 **penditure that was made with the cooperation or with the prior consent of, or in consultation**
37 **with, or at the request or suggestion of, a candidate or any agent or authorized committee**
38 **of the candidate, or any political committee or agent of a political committee supporting or**
39 **opposing a measure, 40 percent of the incorrectly identified expenditure; or**

40 (d) **For each failure to timely file an accurate statement for an in-kind contribution made**
41 **to a candidate, political committee or petition committee, 40 percent of the total amount of**
42 **the contribution.**

43 (8) The Secretary of State, upon a showing of mitigating circumstances, may reduce the amount
44 of the penalty described in subsection (7) of this section.

45 (9) Except as otherwise provided by this section, civil penalties under this section shall be im-

1 posed as provided in ORS 183.745.

2 **SECTION 3.** ORS 260.055 is amended to read:

3 260.055. (1) Each candidate, other than a candidate for political party office, the treasurer of
4 each political committee and the treasurer of each petition committee shall keep detailed accounts.
5 The accounts shall be current as of not later than the seventh calendar day after the date of re-
6 ceiving a contribution or making an expenditure with respect to all contributions received and all
7 expenditures made by or on behalf of the candidate or committee that are required to be reported
8 under ORS **260.044**, 260.057, 260.076 or 260.078. Subject to ORS 260.085, the accounts shall list all
9 information required to be reported under ORS 260.083.

10 (2) Accounts kept by a candidate or the treasurer of a political committee may be inspected
11 under reasonable circumstances at any time before the election to which the accounts refer or
12 during the period specified for retention of the accounts under subsection (3) of this section by any
13 opposing candidate or the treasurer of any political committee for the same electoral contest. The
14 right of inspection may be enforced by writ of mandamus issued by any court of competent juris-
15 diction. The treasurers of political committees supporting a candidate may be joined with the can-
16 didate as defendants in a mandamus proceeding.

17 (3) Accounts kept by a candidate or treasurer shall be preserved by the candidate or treasurer
18 for at least two years after the date the statement of the contribution or expenditure is filed under
19 ORS 260.057.

20 **SECTION 4.** Sections 5, 6 and 7 of this 2016 Act are added to and made a part of ORS
21 chapter 260.

22 **SECTION 5.** (1) Unless otherwise required under ORS 260.055, each person that makes
23 independent expenditures in a total amount of more than \$250 in a calendar year shall keep
24 detailed accounts. The accounts shall be current as of not later than the seventh calendar
25 day after the date of making an independent expenditure that is required to be reported un-
26 der ORS 260.044. The accounts shall list all information required to be reported under ORS
27 260.083.

28 (2) Accounts kept by a person that makes independent expenditures shall be preserved
29 by the person for at least two years after the date an independent expenditure is made.

30 (3) In addition to the requirements of ORS 260.215, the Secretary of State shall review
31 statements of independent expenditures filed under ORS 260.044 or 260.057. For each review,
32 the secretary shall require the person making the independent expenditure to provide doc-
33 umentation of not more than 10 transactions. The requirement to provide documentation
34 may be enforced by writ of mandamus issued by any court of competent jurisdiction.

35 (4) The secretary shall review statements of independent expenditures as provided under
36 subsection (3) of this section four times per calendar year.

37 (5) The secretary by rule shall:

38 (a) Designate a method by which statements of independent expenditures shall be se-
39 lected at random for review under subsection (3) of this section.

40 (b) Designate the period of time within which a person must provide documentation if
41 required to do so under subsection (3) of this section. The secretary may impose a civil
42 penalty under ORS 260.995 on a person who fails to timely provide the documentation re-
43 quired under subsection (3) of this section.

44 (c) Enhance the electronic filing system adopted under ORS 260.057 to provide additional
45 transparency for filed statements of independent expenditures.

1 **SECTION 6.** (1) In addition to the requirements of ORS 260.055 and 260.215 and section 5
2 of this 2016 Act, the Secretary of State shall examine the accounts of political committees
3 selected at random as provided in subsection (4) of this section. For each examination, the
4 secretary shall require that the political committee provide access to all committee bank
5 accounts and other documentation the secretary determines is necessary to successfully
6 conduct the examination. The requirement to provide access to committee bank accounts
7 and other documentation may be enforced by writ of mandamus issued by any court of
8 competent jurisdiction.

9 (2)(a) Each examination conducted by the secretary under this section shall determine
10 whether, during the three months immediately preceding the examination, the political
11 committee accurately and timely complied with all filing requirements set forth in this
12 chapter.

13 (b) If an examination indicates discrepancies between the filings made by the political
14 committee and the filing requirements set forth in this chapter, the secretary may extend
15 the scope of the examination to determine whether, during the two years immediately pre-
16 ceding the examination, the political committee accurately and timely complied with all filing
17 requirements set forth in this chapter.

18 (3) Committee bank account records and other documentation provided by a political
19 committee to the secretary under this section shall be used only for purposes of the exam-
20 ination and may not be disclosed as a public record under ORS 192.410 to 192.505.

21 (4) The secretary shall conduct examinations of political committees under subsection (1)
22 of this section four times per calendar year.

23 (5) The secretary by rule shall:

24 (a) Designate a method by which political committees shall be selected at random for
25 examination under subsection (1) of this section.

26 (b) Designate the period of time within which a political committee must provide access
27 to committee bank accounts and other documentation if required to do so under subsection
28 (1) of this section. The secretary may impose a civil penalty under ORS 260.995 on a person
29 who fails to timely provide the access to committee bank accounts and other documentation
30 required under subsection (1) of this section.

31 **SECTION 7.** (1) When conducting an investigation under ORS 260.345 of a written com-
32 plaint alleging that a violation of election law or rule adopted by the Secretary of State under
33 ORS chapters 246 to 260 has occurred, the secretary or the Attorney General may, upon
34 reasonable suspicion that a violation has occurred and in addition to any other action per-
35 mitted by law, examine the accounts of the person, political committee or petition committee
36 alleged to have committed the violation.

37 (2) When investigating the accounts of a person, political committee or petition com-
38 mittee under this section, the secretary or Attorney General may require that the person,
39 political committee or petition committee provide access to bank accounts and other doc-
40 umentation the secretary or Attorney General determines is necessary to successfully con-
41 duct the investigation. The requirement to provide access to bank accounts and other
42 documentation may be enforced by writ of mandamus issued by any court of competent ju-
43 risdiction.

44 (3) Bank accounts and other documentation provided by a person, political committee or
45 petition committee to the secretary or Attorney General under this section shall be used

1 **only for purposes of the investigation and may not be disclosed as a public record under ORS**
2 **192.410 to 192.505.**

3 **(4) The secretary by rule shall designate the period of time within which a person, poli-**
4 **tical committee or petition committee must provide access to bank accounts and other doc-**
5 **umentation if required to do so under subsection (1) of this section. The secretary or**
6 **Attorney General may impose a civil penalty under ORS 260.995 on a person who fails to**
7 **timely provide the access to committee bank accounts and other requested documentation**
8 **required under subsection (1) of this section.**

9 **SECTION 8.** ORS 260.200 is amended to read:

10 260.200. The Secretary of State by rule shall:

11 (1) Prescribe a uniform system for accounts required by ORS 260.055 **or section 5 of this 2016**
12 **Act.**

13 (2) Prescribe forms for statements and other information required under this chapter to be filed
14 with filing officers, and furnish those forms to persons required to file those statements and other
15 information.

16 (3) Prescribe materials, including financial institution account statements and copies of checks,
17 that a candidate, political committee or petition committee must retain or provide to the secretary
18 for purposes of administering or enforcing the provisions of this chapter. The secretary shall pre-
19 scribe personal or confidential information that is not required to be disclosed under this subsection.

20 **SECTION 9.** ORS 260.218 is amended to read:

21 260.218. (1) The Secretary of State, **or Attorney General acting under ORS 260.345**, may issue
22 subpoenas to compel the production of records, documents, books, papers, memoranda or other in-
23 formation necessary to determine compliance with the provisions of this chapter.

24 (2) If a person fails to comply with any subpoena issued under subsection (1) of this section, a
25 judge of the circuit court of any county, on application of the Secretary of State **or Attorney**
26 **General** shall compel obedience by proceedings for contempt as in the case of disobedience of the
27 requirements of a subpoena issued from the circuit court.

28 **SECTION 10.** ORS 260.345 is amended to read:

29 260.345. (1) Any elector may file with any filing officer a written complaint alleging that a vio-
30 lation of an election law or rule adopted by the Secretary of State under ORS chapters 246 to 260
31 has occurred and stating the reason for believing that the violation occurred and any evidence re-
32 lating to it. A complaint and any evidence relating to it may be filed electronically. A complaint
33 alleging a violation involving the Secretary of State, a candidate for the office of Secretary of State,
34 or any political committee or person supporting the Secretary of State or a candidate for the office
35 of Secretary of State may be filed with the Attorney General. The Secretary of State or Attorney
36 General shall not accept an anonymous complaint.

37 (2) The Secretary of State by rule shall prescribe the procedure for processing a complaint filed
38 with any person other than the Secretary of State. If the complaint concerns the Secretary of State,
39 any candidate for the office of the Secretary of State, or any political committee or person sup-
40 porting the candidacy of the Secretary of State or of another person for the office of Secretary of
41 State, the complaint and any additional information relating to the complaint shall be sent to the
42 Attorney General.

43 (3) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of State
44 or Attorney General immediately shall examine the complaint to determine whether a violation of
45 an election law or rule has occurred and shall make any investigation the Secretary of State or

1 Attorney General considers necessary, **including but not limited to conducting an examination**
2 **of the accounts of a person, political committee or petition committee in the manner set**
3 **forth in section 7 of this 2016 Act.** Except as provided in this subsection, within 48 hours of re-
4 ceiving a complaint under subsection (1) or (2) of this section, the Secretary of State or Attorney
5 General shall notify the person who is the subject of the complaint that a complaint has been re-
6 ceived. If the Secretary of State or Attorney General receives a complaint or complaints involving
7 25 or more individuals, political committees or petition committees in any 24-hour period, the Sec-
8 retary of State or Attorney General need not notify the persons who are the subjects of those
9 complaints within 48 hours of receiving the complaints but shall notify those persons not later than
10 10 business days after receiving the complaint or complaints.

11 (4) If the Secretary of State believes after an investigation under subsection (3) of this section
12 that a violation of an election law or rule has occurred, the secretary:

13 (a) In the case of a violation that is subject to a penalty under ORS 260.993, immediately shall
14 report the findings to the Attorney General and request prosecution. If the violation involves the
15 Attorney General, a candidate for that office or a political committee or person supporting or op-
16 posing the Attorney General or a candidate for that office, the Secretary of State shall appoint an-
17 other prosecutor for that purpose; or

18 (b) In the case of a violation not subject to a penalty under ORS 260.993, may impose a civil
19 penalty under ORS 260.995.

20 (5) Upon receipt of a complaint or report under subsection (1), (2) or (4) of this section involving
21 an alleged violation subject to a penalty under ORS 260.993, the Attorney General or other
22 prosecutor immediately shall examine the complaint or report to determine whether a violation of
23 an election law has occurred. If the Attorney General or prosecutor determines that a violation
24 has occurred, the Attorney General or prosecutor immediately shall begin prosecution in the name
25 of the state. The Attorney General or other prosecutor shall have the same powers in any county
26 of this state as the district attorney for the county.

27 (6) Upon receipt of a complaint under subsection (1) or (2) of this section involving an alleged
28 violation of an election law or rule not subject to a penalty under ORS 260.993, the Attorney Gen-
29 eral shall examine the complaint to determine whether a violation of an election law or rule has
30 occurred and shall make any investigation the Attorney General considers necessary, **including but**
31 **not limited to conducting an examination of the accounts of a person, political committee**
32 **or petition committee in the manner set forth in section 7 of this 2016 Act.** If the Attorney
33 General believes after an investigation that a violation of an election law or rule has occurred, the
34 Attorney General may impose a civil penalty under ORS 260.995.

35 (7) In the case of an alleged violation subject to a civil penalty under ORS 260.995, a complaint
36 shall be filed by an elector under this section no later than 90 days following the election at which
37 a violation of an election law or rule is alleged to have occurred, or 90 days following the date the
38 violation of an election law or rule is alleged to have occurred, whichever is later.

39 (8) A filing officer having reason to believe that a violation of an election law or rule has oc-
40 curred shall proceed promptly as though the officer had received a complaint. Except as provided
41 in ORS 260.234, a filing officer shall proceed under this subsection no later than two years following
42 the election at which a violation of an election law or rule is alleged to have occurred, or two years
43 following the date the violation of an election law or rule is alleged to have occurred, whichever is
44 later. If a filing officer has not proceeded within two years because of fraud, deceit, misleading
45 representation or the filing officer could not have reasonably discovered the alleged violation, the

1 filing officer shall proceed no later than five years following the election at which a violation of an
2 election law or rule is alleged to have occurred, or five years following the date the violation of an
3 election law or rule is alleged to have occurred, whichever is later.

4 **SECTION 11.** In addition to and not in lieu of any other appropriation, there is appro-
5 priated to the Secretary of State, for the biennium beginning July 1, 2015, out of the General
6 Fund, the amount of \$_____ for the purposes of preparing to implement the provisions of
7 sections 5 to 7 of this 2016 Act and the amendments to ORS 260.044, 260.055, 260.200, 260.218,
8 260.232 and 260.345 by sections 1 to 3 and 8 to 10 of this 2016 Act.

9 **SECTION 12.** (1) Sections 5 to 7 of this 2016 Act and the amendments to ORS 260.044,
10 260.055, 260.200, 260.218, 260.232 and 260.345 by sections 1 to 3 and 8 to 10 of this 2016 Act
11 become operative on January 1, 2018.

12 (2) Sections 5 to 7 of this 2016 Act and the amendments to ORS 260.044, 260.055, 260.200,
13 260.218, 260.232 and 260.345 by sections 1 to 3 and 8 to 10 of this 2016 Act apply to any inde-
14 pendent expenditures made or campaign finance statements filed on or after the operative
15 date specified in subsection (1) of this section.

16 (3) The Secretary of State and the Attorney General may take any action before the op-
17 erative date specified in subsection (1) of this section that is necessary to enable the Secre-
18 tary of State and the Attorney General to exercise, on and after the operative date specified
19 in subsection (1) of this section, all of the duties, functions and powers conferred on the
20 Secretary of State and the Attorney General by sections 5 to 7 of this 2016 Act and the
21 amendments to ORS 260.044, 260.055, 260.200, 260.218, 260.232 and 260.345 by sections 1 to 3
22 and 8 to 10 of this 2016 Act.

23 _____