

# Senate Bill 388

Sponsored by Senator FERRIOLI; Representative WHISNANT (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 **as introduced**.

Establishes Whistleblower Commission. Directs commission to investigate complaints of government fraud, waste or corruption and to make public investigation findings. Authorizes commission to refer matters to Attorney General, Secretary of State or district attorney for further proceedings if warranted.

Grants confidentiality to complainants and supplies complainants with immunity from criminal proceedings related to complaint. Exempts commission records from mandatory disclosure under public records law and exempts commission proceedings from public meetings law.

Requires commission to prepare annual reports to Governor and Legislative Assembly outlining commission recommendations for reducing fraud, waste and corruption.

## A BILL FOR AN ACT

1  
2 Relating to whistleblowing.

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

4 **SECTION 1. (1) The Whistleblower Commission is established.**

5 **(2) The Whistleblower Commission consists of five members, appointed as follows:**

6 **(a) One member each shall be appointed by the President of the Senate, the Speaker of**  
7 **the House of Representatives, the minority leader of the Senate and the minority leader of**  
8 **the House of Representatives;**

9 **(b) One member shall be appointed by the Governor, except that the member appointed**  
10 **by the Governor shall be a nonvoting member;**

11 **(c) No more than two members may be registered members of the same political party;**

12 **(d) No more than one member may be a member of the Legislative Assembly in order to**  
13 **give effect to section 3 (6) of this 2017 Act while complying with Article IV, section 14, of the**  
14 **Oregon Constitution; and**

15 **(e) All members must have a history or demonstrated interest in fighting fraud, waste**  
16 **and corruption in government.**

17 **(3) The term of office of a member of the commission is two years, but that member**  
18 **may be removed by the appointing authority for good cause. A member of the commission**  
19 **is eligible for reappointment. If there is a vacancy for any cause, the appointing authority**  
20 **shall make an appointment to become immediately effective for the unexpired term.**

21 **(4) A member of the commission is entitled to compensation and expenses as provided in**  
22 **ORS 171.072 or 292.495.**

23 **(5) A majority of the voting members of the commission constitutes a quorum for the**  
24 **transaction of business. The commission shall select a chairperson from among the voting**  
25 **members of the commission.**

26 **(6) The commission shall meet at times and places specified by the call of the chairperson**  
27 **or of a majority of the voting members of the commission.**

**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       (7)(a) The Legislative Administrator and the Legislative Policy and Research Director  
2 shall provide staff and administrative support for the work of the commission.

3       (b) The commission may appoint an administrator or such other staff as the commission  
4 determines will assist the commission in the performance of its duties.

5       (8) All public bodies, as defined in ORS 174.109, shall assist the commission in the per-  
6 formance of its duties and, to the extent permitted by laws relating to confidentiality, furnish  
7 such information and advice as the members of the commission consider necessary to per-  
8 form their duties.

9       **SECTION 2.** (1) The Whistleblower Commission shall undertake investigation of com-  
10 plaints of possible government fraud, waste or corruption, and may undertake such investi-  
11 gation on its own motion in the absence of any complaint being made. The commission has  
12 authority to undertake investigation of fraud, waste or corruption in any public body, as that  
13 term is defined in ORS 174.109, in the State of Oregon.

14       (2) The commission shall establish a website and conduct outreach among state and local  
15 government employees and stakeholders concerning the commission's duties and mission.

16       (3) The commission shall establish procedures for receiving complaints, interviewing  
17 complainants and evaluating complaints to determine whether further investigation is war-  
18 ranted.

19       (4) With respect to complaints for which the commission has determined further inves-  
20 tigation is warranted and investigations undertaken by its own motion, the commission may:

21       (a) Issue subpoenas or other process to compel the attendance of witnesses or the pro-  
22 duction of documents, records or other objects and property for inspection or other pur-  
23 poses;

24       (b) Consistent with ORS 40.320, administer oaths or affirmations to witnesses and exam-  
25 ine witnesses; and

26       (c) Consult with experts on the interpretation of evidence before the commission.

27       (5) Upon completion of an investigation, the commission shall prepare a written report  
28 of the commission's findings and conclusions and make the report available on the  
29 commission's website. If the commission investigation determines that a public body is en-  
30 gaging in waste, fraud or corruption, the commission may refer its findings to the Attorney  
31 General, the Secretary of State Audits Division or a district attorney for further pro-  
32 ceedings.

33       **SECTION 3.** (1) A complainant may not be discharged, demoted, suspended or in any  
34 manner discriminated or retaliated against by an employer as a result of a good faith report  
35 made under section 2 of this 2017 Act.

36       (2) Any testimony or other evidence provided to the Whistleblower Commission by a  
37 complainant may not be used against the complainant in any criminal action or proceeding,  
38 nor shall any criminal action or proceeding be brought against the complainant on account  
39 of the contents of the complaint or any testimony or evidence supplied by the complainant.

40       (3) The identity of the complainant shall be held confidentially and shall be redacted from  
41 any report or other documents prepared and released by the commission under section 2 of  
42 this 2017 Act. The complainant may elect to waive the confidentiality provided under this  
43 subsection.

44       (4) Any records created by or submitted to the commission are exempt from mandatory  
45 disclosure under ORS 192.410 to 192.505 during the course of an ongoing investigation and for

1 two years thereafter to permit complete resolution of any matter referred by the commission  
2 under section 2 (5) of this 2017 Act.

3 (5) Commission proceedings are exempt from ORS 192.610 to 192.690.

4 (6) The remedies and protections supplied under this section and section 2 of this 2017  
5 Act are in addition to and not in lieu of any remedies or protections available under ORS  
6 177.170, 177.180, 659A.199, 659A.200 to 659A.224 or other law.

7 SECTION 4. The Whistleblower Commission shall submit a written report annually to the  
8 Governor and the Legislative Assembly, outlining any recommendations the commission has  
9 for reducing waste, fraud and corruption.

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