To: Government Ethics Work Group and Interested Persons  
Re: Staff Analysis and Recommendation on LC 1084  
   Adjudication Procedure and Education  
From: Wendy J. Johnson, Deputy Director, Oregon Law Commission  
Date: September 29, 2006

LC 1084 would make changes to the GSPC adjudication procedures, streamline the present adjudication procedure statutes for readability and understanding, and make changes to some of the education components of the GSPC statutes, namely those regarding the GSPC manual.

Oregon Law Commission staff has reviewed the text of the draft statutory provisions in LC 1084. Staff finds that the statutory draft appropriately reflects the decisions and recommendations made by the Administration of Government Ethics Sub-Work Group (Group #2). Group #2 now forwards the draft to the full Government Ethics Work Group for consideration and action.

**Adjudication Procedure:** The sub-Work Group agreed to make the following recommendations at its meetings on June 12 and June 28, 2006:

1. The period of time (called the Preliminary Review Phase) from the filing of an ethics complaint or from the date of the Commission’s own motion to investigate an ethics matter, to the finding of case, dismissal of the complaint, or the rescission of the Commission’s own motion should be extended from 90 to 135 days. *(See p. 5 of LC 1084 – section 1(4)(a))*

2. An exception to the 135 day Preliminary Review Phase should be made when a complaint is filed against a candidate for elected public office and the election date is within 61 days. The candidate must request in writing a delay of the Preliminary Review Phase – that is, the candidate can choose to proceed or delay. *(See p. 5 of LC 1084 – section 1(4)(a)(B))*

3. The period of time (called the Investigatory Phase) from the finding of cause to the beginning of any contested case proceeding should be extended from 120 days to 180 days. *(See p. 7 of LC 1084 – section 1(6)(a))*

4. Ethics complaints should follow the traditional Oregon administrative process for contested case proceedings. The ability for a public official to opt-out of the administrative process and require the Commission to refile in Marion County Circuit Court after the Commission moves to a contest case proceeding, should be removed. *(See bottom of p. 8 – top of p. 9 of LC 1084 – deleting ORS 244.260(8) (opt-out provision))* *(See p. 9 of LC 1084 – section 1(9)) (requiring hearings before an ALJ assigned from the Office of Administrative Hearings and following contested case procedure under ORS chapter 183))*
(See also p. 10 and 11 of LC 1084 – section 2(1) and section 3 (conforming changes to take out court’s authority to impose sanctions and award attorney fees since GSPC would only have authority to impose sanctions and award attorney fees under the APA process)

5. The adjudication process should be clarified in statute so that it can be easily read and followed. Some provisions found in administrative rules should be provided in statute. (See pp. 1-10 of LC 1084 – section 1)

Staff Note: Section 1 of LC 1084 significantly reorganizes and rewords ORS 244.260 to make the adjudication process statute easy to read and follow. The statute is written in a sequential order, e.g. starting from the complaint or Commission’s own motion through the Preliminary Review and Investigatory Phase and through the contested case process. Gaps in the process are filled in from the administrative rules and the present process is simply codified and clarified. In addition, LC form and style changes are made throughout. It appears that no substantive law changes are intended.

Education: The Sub-Work Group agreed to make the following recommendations at its meeting on June 28, 2006:

6. The statutory provisions regarding the manual should also be combined and streamlined – ORS 244.290(2), 244.320, and 244.330 as they are duplicative and confusing. (See bottom of pp. 11-13 and p. 15 of LC 1084 – sections 4-6 and 10) Note: All the manual provisions are placed in ORS 244.320; ORS 244.330 is repealed and the manual references in ORS 244.290 are deleted.

7. Delete “lobbyists” from ORS 244.340, as the GSPC does not have an education program for lobbyists. (See p. 13 of LC 1084 – section 6)

8. The work group recommends providing a searchable database and online training tools as appropriate. In general, more training materials would be beneficial. (This item is more of a funding matter and not suitable for statutory change.)

9. The work group recommends funding a full-time trainer. The group believes that the GSPC’s staff presently does not reflect the two primary functions of the GSPC: enforcement and education. Presently, staff is focused on enforcement and punishment. (This item is more of a funding matter and not suitable for statutory change.)