SUMMARY

Authorizes public official to establish legal expense trust fund for use by public official to defray legal expenses incurred by public official in defending public official in legal proceeding relating to or arising from status of person as public official. Requires approval of trust fund by Oregon Government Standards and Practices Commission.

Prohibits personal use of trust fund proceeds. Prohibits public official from soliciting contributions to trust fund. Directs trustee of trust fund to file with commission quarterly reports of contributions received and expenditures made.

A BILL FOR AN ACT

Relating to legal expense trust funds; creating new provisions; and amending ORS 244.020, 244.040, 244.060 and 244.350.

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

SECTION 1. Sections 2 to 10 of this 2007 Act are added to and made a part of ORS chapter 244.

SECTION 2. (1) Subject to the authorization of the Oregon Government Standards and Practices Commission as described in section 4 of this 2007 Act, a public official may establish a legal expense trust fund if the public official incurs or reasonably expects to incur legal expenses described in subsection (2) of this section.

(2) Proceeds from the trust fund may be used by the public official to defray legal expenses incurred by the public official in defending the public official in any civil, criminal or other legal proceeding or investigation that:

(a) Is brought or maintained by a public body as defined in ORS 174.109; and

NOTE: Matter in **bold faced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **bold faced** type.
(b) Relates to or arises from the status of the person as a public official.

(3) Except as provided in subsection (2) of this section, a public official may not use proceeds from the trust fund for any personal use.

(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

(5) A public official who establishes a legal expense trust fund may not solicit, receive or handle any contributions to the fund.

(6) The provisions of ORS chapter 130 do not apply to a trust fund established under sections 2 to 10 of this 2007 Act.

SECTION 3. (1) The proceeds of a legal expense trust fund may be used to:

(a) Defray legal expenses described in section 2 of this 2007 Act;

(b) Defray costs reasonably incurred in administering the trust fund, including but not limited to costs incident to the solicitation of funds; and

(c) Discharge any tax liabilities incurred as a result of the creation, operation or administration of the trust fund.

(2) The proceeds of a trust fund may also be used to defray or discharge expenses, costs or liabilities incurred before the fund was established if the expenses, costs or liabilities are related to the legal proceeding for which the fund was established.

SECTION 4. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Standards and Practices Commission. The application must contain:

(a) A copy of an executed trust agreement described in subsection (2) of this section;

(b) A sworn affidavit described in subsection (3) of this section signed by the public official; and

(c) A sworn affidavit described in subsection (4) of this section signed by the trustee.
(2) The trust agreement must contain the following:
   (a) A provision incorporating by reference the provisions of sections 2 to 10 of this 2007 Act; and
   (b) A designation of a trustee who meets the requirements of section 5 of this 2007 Act.
(3) The affidavit of the public official must state:
   (a) The nature of the legal proceeding that requires establishment of the trust fund;
   (b) That the public official will comply with the provisions of sections 2 to 10 of this 2007 Act; and
   (c) That the public official is responsible for the proper administration of the trust fund, even though a trustee of the fund has been designated.
(4) The affidavit of the trustee must state that the trustee:
   (a) Has read and understands sections 2 to 10 of this 2007 Act; and
   (b) Consents to administer the trust fund in compliance with sections 2 to 10 of this 2007 Act.
(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of sections 2 to 10 of this 2007 Act. If the commission determines that the application meets the requirements of sections 2 to 10 of this 2007 Act, the commission shall grant written authorization to the public official to establish the trust fund.
(6) The commission shall review the quarterly reports required under section 8 of this 2007 Act and shall monitor the activities of each trust fund to ensure continued compliance with sections 2 to 10 of this 2007 Act.
(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS
192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of sections 2 to 10 of this 2007 Act.

SECTION 5. (1) The trustee of a legal expense trust fund is responsible for:

(a) The receipt and deposit of contributions to the trust fund;

(b) The authorization of expenditures and disbursements from the trust fund;

(c) The filing of quarterly statements required under section 8 of this 2007 Act; and

(d) The performance of other tasks incident to the administration of the trust fund.

(2) The trustee may not:

(a) Be a public official who serves the same public body as the public official who establishes the trust fund;

(b) Be a relative or member of the household of the public official who establishes the trust fund;

(c) Be an attorney for the public official in the legal proceeding for which the trust fund is established, or a member, partner, associate or employee of the firm employing the attorney; or

(d) Have a business or employment relationship with the public official who establishes the trust fund.

SECTION 6. (1) Except as provided in subsection (3) of this section, any person may contribute to a legal expense trust fund established under sections 2 to 10 of this 2007 Act.

(2) A person may make contributions of moneys to a legal expense
trust fund in unlimited amounts. Pro bono legal assistance and other
in-kind assistance may also be provided without limit and is consid-
ered a contribution subject to the reporting requirements of section 8
of this 2007 Act.

(3) A political committee as defined in ORS 260.005 that is a prin-
cipal campaign committee may not contribute to a legal expense trust
fund.

SECTION 7. (1) A trustee of a legal expense trust fund shall estab-
lish a single exclusive account in a financial institution, as defined in
ORS 706.008. The financial institution must be located in this state and
must ordinarily conduct business with the general public in this state.

(2) The trustee shall maintain the account in the name of the trust
fund.

(3) All expenditures made by the trustee shall be drawn from the
account and:

(a) Issued on a check signed by the trustee; or
(b) Paid using a debit card or other form of electronic transaction.

(4) A contribution received by a trustee shall be deposited into the
account not later than seven calendar days after the date the contri-
bution is received. This subsection does not apply to in-kind contrib-
butions received.

(5) This section does not prohibit the transfer of any amount de-
posited in the account into a certificate of deposit, stock fund or other
investment instrument.

(6) The account may not include any public or private moneys or
any moneys of any other person, other than contributions received by
the trustee.

(7) A trustee shall retain a copy of each financial institution ac-
count statement from the account described in this section for not less
than two years after the date the statement is issued by the financial
institution.
SECTION 8. (1) The trustee of a legal expense trust fund shall, according to the schedule described in subsection (3) of this section, file with the Oregon Government Standards and Practices Commission a statement for the applicable reporting period showing contributions received by the trustee and expenditures made from the trust fund account established under section 7 of this 2007 Act.

(2) Each statement shall list:

(a) The name and address of each person who contributed an aggregate amount of more than $75, and the total amount contributed by that person;

(b) The total amount of other contributions as a single item, but shall specify how those contributions were obtained;

(c) The amount and purpose of each expenditure and the name and address of each payee; and

(d) The name and address of any person contributing pro bono legal assistance and the fair market value of the assistance provided by the person.

(3) Statements required to be filed with the commission under this section shall be filed in each calendar year:

(a) Not later than April 15, for the accounting period beginning January 1 and ending March 31;

(b) Not later than July 15, for the accounting period beginning April 1 and ending June 30;

(c) Not later than October 15, for the accounting period beginning July 1 and ending September 30; and

(d) Not later than January 7 of the following calendar year, for the accounting period beginning October 1 and ending December 31.

(4) If no contributions are received and no expenditures made during the reporting period, the trustee shall file a statement indicating that no contributions were deposited and no expenditures were made.

(5) The trustee may amend a statement filed under this section
without penalty if the amendment is filed with the commission not later than 30 days after the deadline for filing the statement.

SECTION 9. (1) A legal expense trust fund established under sections 2 to 10 of this 2007 Act may be terminated by:
(a) The public official who established the trust fund;
(b) Subject to subsection (2) of this section, by the terms of the trust agreement; or
(c) By the Oregon Government Standards and Practices Commission following a determination by the commission that a violation of any provision of ORS chapter 244 has occurred in connection with the trust fund.

(2) A trust agreement may provide that a legal expense trust fund is terminated not later than six months following the completion of the legal proceeding for which the fund was established. Upon application of the public official who established the trust fund, the commission may extend the existence of the trust fund to a specified date if the commission determines that the public official has incurred legal expenses that exceed the balance remaining in the fund. If the commission extends the existence of the trust fund, the trust fund terminates on the date the extension expires.

(3) Following termination of a legal expense trust fund, the trustee may not accept contributions to or make expenditures from the fund.

(4) Not later than 30 days after a trust fund is terminated, the trustee of the fund shall file with the commission a final report listing the totals of all contributions made to the fund and all expenditures made from the fund.

SECTION 10. (1) Not later than 30 days after a legal expense trust fund is terminated, the trustee of the fund shall return any moneys remaining in the fund to contributors to the fund on a pro rata basis.

(2) If the legal proceeding for which the trust fund was established results in an award of attorney fees, costs or any other money judg-
ment award to or in favor of the public official, amounts awarded shall be distributed in the following order:

(a) To pay outstanding legal expenses;
(b) To contributors to the trust fund on a pro rata basis; and
(c) To the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

SECTION 11. ORS 244.020 is amended to read:

244.020. As used in this chapter, unless the context requires otherwise:

(1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (14) of this section.

(2) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) “Business with which the person is associated” means:

(a) Any private business or closely held corporation of which the person or the person’s relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person’s relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth $1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person’s relative owns or has owned $100,000 or more in stock or another form of
equity interest, stock options or debt instruments at any point in the pre-
ceeding calendar year;
(c) Any publicly held corporation of which the person or the person’s re-
relative is a director or officer; or
(d) For public officials required to file a statement of economic interest
under ORS 244.050, any business from which 50 percent or more of the total
annual income of the person and members of the person’s household is de-
derived during the current calendar year.
(4) “Commission” means the Oregon Government Standards and Practices
Commission.
(5) “Development commission” means any entity which has the authority
to purchase, develop, improve or lease land or the authority to operate or
direct the use of land. This authority must be more than ministerial.
(6) “Expenditure” has the meaning given that term in ORS 260.005.
(7)(a) “Gift” means something of economic value given to a public official
or [the public official’s] a relative of the public official:
(A) Without valuable consideration of equivalent value, including the full
or partial forgiveness of indebtedness, which is not extended to others who
are not public officials or the relatives of public officials on the same terms
and conditions; [and something of economic value given to a public official or
the public official’s relative] or
(B) For valuable consideration less than that required from others who
are not public officials. [However, “gift” does not mean:]
(b) “Gift” does not mean:
[(a) Campaign contributions, as described in ORS chapter 260.]
(A) Contributions as defined in ORS 260.005.
[(b)] (B) Gifts from family members.
(C) Contributions made to a legal expense trust fund established
under section 4 of this 2007 Act for the benefit of the public official.
[(c)] (D) The giving or receiving of food, lodging and travel when partic-
ipating in an event which bears a relationship to the public official’s office
and when appearing in an official capacity, subject to the reporting re-
requirement of ORS 244.060 (6).

[(d)] (E) The giving or receiving of food or beverage if the food or
beverage is consumed by the public official or the public official’s relatives
in the presence of the purchaser or provider thereof.

[(e)] (F) The giving or receiving of entertainment if the entertainment is
experienced by the public official or the public official’s relatives in the
presence of the purchaser or provider thereof and the value of the enter-
tainment does not exceed $100 per person on a single occasion and is not
greater than $250 in any one calendar year.

(8) ["Honoraria"] **Honorarium** means a payment or something of eco-
nomic value given to a public official in exchange for services upon which
custom or propriety prevents the setting of a price. Services include, but are
not limited to, speeches or other services rendered in connection with an
event at which the public official appears in an official capacity.

(9) "Income" means income of any nature derived from any source, in-
cluding, but not limited to, any salary, wage, advance, payment, dividend,
interest, rent, honoraria, return of capital, forgiveness of indebtedness, or
anything of economic value.

(10) "Legislative or administrative interest" means an economic interest,
distinct from that of the general public, in one or more bills, resolutions,
regulations, proposals or other matters subject to the action or vote of a
person acting in the capacity of a public official.

(11) "Legislative official" means any member or member-elect of the Leg-
islative Assembly, any member of an agency, board or committee that is part
of the legislative branch and any staff person, assistant or employee thereof.

(12) "Member of household" means any relative who resides with the
public official.

(13) "Planning commission" means a county planning commission created
under ORS chapter 215 or a city planning commission created under ORS
chapter 227.
(14) "Potential conflict of interest" means any action or any decision or
recommendation by a person acting in a capacity as a public official, the
effect of which could be to the private pecuniary benefit or detriment of the
person or the person’s relative, or a business with which the person or the
person’s relative is associated, unless the pecuniary benefit or detriment
arises out of the following:
(a) An interest or membership in a particular business, industry, occupa-
tion or other class required by law as a prerequisite to the holding by the
person of the office or position.
(b) Any action in the person’s official capacity which would affect to the
same degree a class consisting of all inhabitants of the state, or a smaller
class consisting of an industry, occupation or other group including one of
which or in which the person, or the person’s relative or business with which
the person or the person’s relative is associated, is a member or is engaged.
The Oregon Government Standards and Practices Commission may by
rule limit the minimum size of or otherwise establish criteria for or identify
the smaller classes that qualify under this exception.
(c) Membership in or membership on the board of directors of a nonprofit
corporation that is tax-exempt under section 501(c) of the Internal Revenue
Code.
(15) "Public official" means any person who, when an alleged violation
of this chapter occurs, is serving the State of Oregon or any of its political
subdivisions or any other public body of the state as an officer, employee,
agent or otherwise, and irrespective of whether the person is compensated
for such services.
(16) "Relative" means the spouse of the public official, any children of the
public official or of the public official’s spouse, and brothers, sisters or par-
ents of the public official or of the public official’s spouse.
(17) "Statement of economic interest" means a statement as described by
ORS 244.060 to 244.080.
(18) "Statewide official" means the Secretary of State or Secretary of
State-elect, State Treasurer or State Treasurer-elect, Superintendent of Public Instruction or Superintendent-elect of Public Instruction, Attorney General or Attorney General-elect and the Commissioner of the Bureau of Labor and Industries or the Commissioner-elect of the Bureau of Labor and Industries.

(19) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters.

SECTION 12. ORS 244.040 is amended to read:

244.040. [The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120:]

[(1)(a)] (1) [No] Except as provided in subsection (2) of this section, a public official [shall] may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment [that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for] for the public official or a relative of the public official, or any business with which the public official or a relative of the public official is associated[], if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body served by the public official.

(b) The receipt of an honorarium by a public official or a relative of the public official.

(c) Reimbursement of expenses.

(d) An unsolicited award for professional achievement.
(e) Contributions made to a legal expense trust fund established under section 4 of this 2007 Act for the benefit of the public official.

[(b)] (3) [No] A statewide official [shall] may not solicit or receive, whether directly or indirectly, honoraria for the statewide official or for any member of the household of the official. No candidate for statewide office shall solicit or receive, whether directly or indirectly, honoraria for the candidate or for any member of the household of the candidate.

[(c)] (4) [No] A legislative official [shall] may not solicit or receive, whether directly or indirectly, honoraria in an amount in excess of $1,500 or in any amount for an appearance within the state or for an appearance during a legislative session, regardless of location, for the legislative official or for any member of the household of the official, except that a legislative official may solicit or receive honoraria for services performed in relation to the private profession or occupation of the legislative official. No candidate for legislative office shall solicit or receive, whether directly or indirectly, honoraria in an amount in excess of $1,500 or in any amount for an appearance within the state for the candidate or for any member of the household of the candidate, except that a candidate for legislative office may solicit or receive honoraria for services performed in relation to the private profession or occupation of the legislative official.

[(d)] (5) Any public official not described in paragraph (b) or (c) of this subsection or a member of the public official's household may receive honoraria.

[(2)] (6) No public official or candidate for office or a relative of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of $100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.
[(3)] (7) [No] A public official [shall] may not solicit or receive, either
directly or indirectly, and no person shall offer or give to any public official
any pledge or promise of future employment, based on any understanding
that such public official’s vote, official action or judgment would be influ-
enced thereby.

[(4)] (8) [No] A public official [shall] may not attempt to further or fur-
ther the personal gain of the public official through the use of confidential
information gained in the course of or by reason of the official position or
activities of the public official in any way.

[(5)] (9) [No] A person [shall] may not offer during any calendar year
any gifts with an aggregate value in excess of $100 to any public official or
candidate therefor or a relative of the public official or candidate if the
person has a legislative or administrative interest in a governmental agency
in which the official has or the candidate if elected would have any official
position or over which the official exercises or the candidate if elected would
exercise any authority.

[(6)] (10) [No] A person [shall] may not attempt to represent or represent
a client for a fee before the governing body of a public body of which the
person is a member. This subsection does not apply to the person’s employer,
business partner or other associate.

(11) The provisions of this section apply regardless of whether ac-
tual conflicts of interest or potential conflicts of interest are an-
nounced or disclosed under ORS 244.120.

SECTION 13. ORS 244.350 is amended to read:

244.350. (1) The Oregon Government Standards and Practices Commission
or the court under ORS 244.260 (8) may impose civil penalties not to exceed:
(a) Except as provided in paragraph (b) of this subsection and subsection
(4) of this section, $1,000 for [violating] violation of any provision of this
chapter or any resolution adopted under this chapter.
(b) $25,000 for violation of ORS 244.045.
(2)(a) Except as provided in paragraph (b) of this subsection,
commission may impose civil penalties not to exceed $1,000 for [violating]
violation of any provision of ORS 192.660. [However,]
(b) A civil penalty may not be imposed under this subsection if the vio-
luation occurred as a result of the governing body of the public body acting
upon the advice of the public body’s counsel.
(3) The commission may impose civil penalties not to exceed $250 for vi-
olation of ORS 293.708.
(4)(a) The commission may impose civil penalties against a person
who fails to file a statement required under section 8 of this 2007 Act.
(b) Failure to file the required statement in timely fashion is prima
facie evidence of a violation of section 8 of this 2007 Act.
(c) The commission may impose a civil penalty of $10 for each of
the first 14 days the statement is late and $50 for each day thereafter.
The maximum penalty that may be imposed under this subsection is
$5,000.
[(4)] (5) Any penalty imposed under this section is in addition to and not
in lieu of any other penalty or sanction that may be imposed according to
law, including removal from office.
SECTION 14. ORS 244.060 is amended to read:
244.060. The statement of economic interest filed under ORS 244.050, shall
be on a form prescribed by the Oregon Government Standards and Practices
Commission, and the person filing the statement shall supply the information
required by this section and ORS 244.090, as follows:
(1) The name of all positions as officer of a business and business
directorships held by the person or a member of the household of the person
during the preceding calendar year.
(2) All names under which the person and members of the household of
the person do business.
(3) Sources of income received at any time during the preceding calendar
year by the person or a member of the household of the person that produce
10 percent or more of the total annual household income.
(4) The name, principal address and brief description of the source of income from which 50 percent or more of the total annual income of the person and members of the household of the person was received during the preceding calendar year and whether the source existed during the preceding year, and whether the source is derived from an entity that now does business or could reasonably be expected to do business or has legislative or administrative interest in the governmental agency of which the public official is or the candidate if elected would be a member or over which the public official has or the candidate if elected would have authority.

(5)(a) The listing of all real property in which the public official or candidate therefor or a member of the household of the public official or candidate has or has had any personal, beneficial ownership interest during the preceding calendar year, any options to purchase or sell real property, including a land sales contract, and any other rights of any kind in real property located within the geographic boundaries of the governmental agency of which the public official is or the candidate if elected would be a member or over which the public official has or the candidate if elected would have authority.

(b) This subsection does not require the listing of the principal residence of the public official or candidate.

(6)(a) Notwithstanding ORS 244.020 [(7)(e)] (7)(b)(C), if a public official has received food, lodging and payment of travel expenses exceeding $100 when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, the name, nature and business address of the organization paying the expenses and the date and amount of that expenditure.

(b) Beginning on July 1, 1992, the dollar amount specified in paragraph (a) of this subsection shall be adjusted annually by the commission based upon the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding
12-month period. The amount determined under this paragraph shall be rounded to the nearest dollar.

(7) Any honoraria exceeding $50 received during the preceding calendar year by the person or a member of the household of the person, the payer of the honoraria and the date and time of the event for which the honoraria was received.

SECTION 15. (1) Sections 2 to 10 of this 2007 Act and the amendments to ORS 244.020, 244.040, 244.060 and 244.350 by sections 11 to 14 of this 2007 Act apply to legal expense trust funds established for legal proceedings commenced prior to, on or after the effective date of this 2007 Act.

(2) The amendments to ORS 244.020, 244.040 and 244.060 by sections 11, 12 and 14 of this 2007 Act apply to contributions made to legal expense trust funds on or after the effective date of this 2007 Act.

(3) The amendments to ORS 244.350 by section 13 of this 2007 Act apply to violations of any provision of ORS chapter 244 or any resolution adopted under ORS chapter 244 occurring on or after the effective date of this 2007 Act.