

House Bill 2860

Sponsored by Representative GIROD; Representatives BOQUIST, BRUUN, CANNON, DALLUM, ESQUIVEL, GARRARD, GILLIAM, GILMAN, HANNA, KOMP, KRUMMEL, OLSON, G SMITH, P SMITH, WHISNANT, WITT

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**.

Prohibits commencement of civil action against school district until after claim has been submitted to legal review panel. Establishes membership and procedures for legal review panels.

A BILL FOR AN ACT

1
2 Relating to civil actions against school districts.

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

4 **SECTION 1. Definitions. As used in sections 1 to 16 of this 2007 Act:**

5 (1) "Claim" means a civil claim seeking damages from a school district.

6 (2) "Claimant" means a person who files a notice of claim under section 4 of this 2007
7 Act.

8 (3) "Panel" means a legal review panel appointed under sections 1 to 16 of this 2007 Act.

9 **SECTION 2. Mandatory submission of claims. (1) A person may commence a civil action**
10 **against a school district only if the person has complied with sections 1 to 16 of this 2007**
11 **Act. A complaint in an action that is subject to this section must allege compliance with**
12 **sections 1 to 16 of this 2007 Act.**

13 (2) A civil action against a school district may not be filed until a legal review panel's
14 findings on the claim are filed with the circuit court in which the action will be brought.

15 **SECTION 3. Applicability. Section 2 of this 2007 Act applies only to civil actions that are**
16 **commenced as described in ORS 12.020 on or after July 1, 2008.**

17 **SECTION 4. Notice of claim. (1) Before commencing a civil action against a school dis-**
18 **trict, the person asserting the claim must file a written notice of the claim in the circuit**
19 **court for a county in which the civil action could be commenced. A notice of claim must be**
20 **clearly titled as a notice of claim and must set forth the details of the claim, including all**
21 **facts and circumstances giving rise to the claim and the amount of damages sought from the**
22 **school district. The notice of claim is subject to ORCP 17.**

23 (2) A person filing a notice of claim must serve a copy of the notice on the school district
24 against which a claim is made in the manner provided in ORCP 7 not more than 10 days after
25 the claim is filed.

26 (3) A notice of claim must contain the following:

27 (a) The name and primary administrative address of the school district against which the
28 claim is made;

29 (b) A detailed statement of facts relating to the conduct that is alleged to support the
30 claim;

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 (c) The date or dates on which the acts or omissions causing the damages allegedly oc-
 2 curred;

3 (d) The identity of all expert witnesses on whom the claimant relies, and a summary of
 4 the opinions of the expert witnesses;

5 (e) All other facts on which a claimant relies to establish the claim; and

6 (f) An authorization that allows a legal review panel to obtain access to all records and
 7 information relating to the claim, and that waives any confidentiality or privilege solely for
 8 the purpose of consideration of the records by the panel.

9 (4) The authorization required by subsection (3)(f) of this section does not constitute a
 10 waiver of confidentiality or privilege for any purpose other than consideration of a claim by
 11 a panel.

12 (5) A notice of claim and all other documents filed with a circuit court in a proceeding
 13 before a panel are confidential and not subject to disclosure under ORS 192.410 to 192.505 or
 14 any other provision of Oregon law during the pendency of proceedings before the panel.

15 (6) A person shall pay to the clerk of the circuit court a filing fee of \$_____ at the time
 16 of the filing of a notice of claim under this section.

17 **SECTION 5. Response.** Within 20 days after a notice of claim is served on a school dis-
 18 trict under section 4 of this 2007 Act, the school district must file an appearance in the cir-
 19 cuit court for the county in which the notice of claim is filed. The school district must serve
 20 a copy of the appearance on the claimant and the chair of the legal review panel in the
 21 manner provided by ORCP 9. At the time of filing an appearance, a school district shall pay
 22 a filing fee of \$_____.

23 **SECTION 6. Source list; master list.** (1) The State Court Administrator shall establish
 24 and maintain a source list of school administrators, attorneys and retired Oregon judges who
 25 are willing and qualified to serve on legal review panels. The source list shall include persons
 26 recommended by professional organizations and other interested parties, and persons who
 27 have applied to the State Court Administrator for inclusion on the source list. An application
 28 for inclusion on the source list must set forth the person's qualifications for serving on a
 29 panel.

30 (2) The State Court Administrator shall update the source list prepared under subsection
 31 (1) of this section at least once each year.

32 (3) On or before December 15 of each year, the Chief Justice of the Supreme Court shall
 33 prepare a master list of persons who are willing and qualified to serve on panels. The Chief
 34 Justice shall prepare the master list by selecting persons from the source list prepared under
 35 subsection (1) of this section. The Chief Justice shall make copies of the master list available
 36 to the presiding judges and clerks of the circuit courts.

37 **SECTION 7. Appointment of chair of legal review panel.** (1) Not more than five days after
 38 a notice of claim is filed with the circuit court under section 4 of this 2007 Act, the presiding
 39 judge of the circuit court for the county in which the notice of claim is filed shall appoint a
 40 person to serve as the chair of the legal review panel that will hear the claim. The appoint-
 41 ment must be made in writing. The person appointed must be a retired Oregon judge, a
 42 person with judicial experience or a person with appropriate civil trial experience. The ap-
 43 pointment must be made from the master list prepared by the Chief Justice of the Supreme
 44 Court under section 6 of this 2007 Act.

45 (2) The clerk of the circuit court shall, upon request by the chair, provide administrative

1 and clerical support to the chair.

2 **SECTION 8. Appointment of members of legal review panel.** (1) Within 10 days after re-
 3 ceipt of confirmation of appointment as the chair of a legal review panel, the chair shall
 4 appoint the members of the panel. The appointments must be made from the master list
 5 prepared by the Chief Justice of the Supreme Court under section 6 of this 2007 Act.

6 (2) With the agreement of all parties to a proceeding before a panel, the chair may ap-
 7 point a person who is not on the master list prepared by the Chief Justice under section 6
 8 of this 2007 Act.

9 (3) As soon as possible after a panel is appointed under this section, the chair shall give
 10 notice of the appointments to the parties and to the presiding judge of the circuit court for
 11 the county in which the notice of claim is filed.

12 (4) Panel members are immune from civil liability for all communications, findings,
 13 opinions and conclusions rendered in the course and scope of the duties prescribed by
 14 sections 1 to 16 of this 2007 Act.

15 **SECTION 9. Prehearing procedures.** (1) Within five days after filing an appearance under
 16 section 5 of this 2007 Act, a school district shall contact the claimant or, if the claimant is
 17 represented by counsel, shall contact the claimant's counsel. The school district shall es-
 18 tablish a timetable for completing discovery and filing all relevant records necessary to a
 19 determination by the legal review panel. The claimant shall notify the chair of the panel of
 20 the timetable.

21 (2) If the parties to a proceeding before a panel are unable to agree on a timetable within
 22 five days after the filing of an appearance, the claimant shall notify the chair. The chair
 23 shall:

- 24 (a) Establish a timetable for the filing of all relevant records and reasonable discovery;
- 25 (b) Provide a copy of the timetable to the parties; and
- 26 (c) File a copy of the timetable with the clerk of the circuit court for the county in which
 27 the notice of claim is filed.

28 (3) The chair shall establish a date for the hearing before the panel. If the chair has es-
 29 tablished a timetable under subsection (2) of this section, the hearing may not be scheduled
 30 sooner than 30 days after the copy of the timetable is provided to the parties. Except as
 31 provided in subsection (4) of this section, all hearings on a notice of claim must be held
 32 within 120 days after the notice of claim is filed with the circuit court under section 4 of this
 33 2007 Act.

34 (4) A party to a proceeding before a panel may request an extension for any date specified
 35 in the timetable established under this section, or for the hearing date established for the
 36 hearing. The request must be made in writing to the chair. The chair may grant an exten-
 37 sion, but may not extend any time period that would result in the hearing being held more
 38 than 150 days after the notice of claim is filed with the circuit court under section 4 of this
 39 2007 Act.

40 (5) The chair shall permit reasonable discovery, including discovery of the identity of an
 41 expert witness. Parties may not depose expert witnesses, but parties may require the pro-
 42 duction of a summary of the opinion of the expert witness. The summary must set forth the
 43 bases upon which the opinion is rendered and must be signed by the expert witness. Any
 44 party may depose an opposing party. Except for discovery of the identity of expert witnesses,
 45 production of a summary of the opinion of an expert witness and depositions of opposing

1 parties, all discovery must be approved by the chair before the discovery is requested.

2 (6) The chair has the same power to subpoena as a circuit court judge, and may exercise
3 that power without the agreement of panel members.

4 **SECTION 10. Hearing procedure.** (1) A claimant or a representative of the claimant shall
5 present the case before the legal review panel. The school district shall make a responding
6 presentation.

7 (2) The chair shall make all procedural rulings. Rulings by the chair on procedural mat-
8 ters are final. The chair shall afford the parties wide latitude in presenting the case, includ-
9 ing allowing the use of sworn statements in lieu of testimony. Cross-examination of
10 witnesses is permitted, but the chair shall limit cross-examination to the minimum neces-
11 sary to allow the panel to make informed findings.

12 (3) The Oregon Rules of Evidence do not apply to hearings conducted by a panel. The
13 chair shall admit evidence if it is the kind of evidence upon which reasonable persons rely
14 in the conduct of serious affairs. A party may introduce a deposition regardless of whether
15 the deponent is available at the hearing. The panel shall make findings upon the evidence
16 that is presented at the hearing, including records and any expert opinion provided by or
17 sought by the panel or the parties.

18 (4) After presentations by the parties, the panel may request from either party additional
19 facts, records or other information to be submitted in writing or at a continued hearing to
20 be held as soon as practicable. Panel members who attended the initial hearing must attend
21 any continued hearing unless the parties agree otherwise.

22 (5) The panel shall make and keep an audio record of a hearing before the panel. The
23 record shall remain confidential and is not subject to disclosure under ORS 192.410 to 192.505
24 or any other provision of Oregon law without the consent of all parties. Hearings conducted
25 by the panel are not subject to ORS 192.610 to 192.690 and may not be opened to the public
26 without the consent of all parties.

27 (6) The parties to a proceeding before a panel may agree to submit the claim to the panel
28 for a determination of damages. Any determination by the panel regarding damages is not
29 binding on the parties.

30 (7) A chair or panel member may not be examined or deposed as to:

- 31 (a) Any communication to or from a party or the party's legal representative;
- 32 (b) Communications between panel members; or
- 33 (c) The findings of a panel on which the member served.

34 **SECTION 11. Dismissal of claims.** (1) A claimant may dismiss a claim pending before a
35 legal review panel at any time. The parties may agree to dismiss a claim by a stipulation of
36 dismissal signed by all parties who have appeared before the panel. If a chair for the panel
37 has been appointed, a notice of dismissal may be filed with the chair. If a chair has not been
38 appointed, the notice of dismissal may be filed with the circuit court for the county in which
39 the notice of claim is filed.

40 (2) The chair may order dismissal of a claim or order that a school district is in default
41 if a party fails to comply with rulings of the chair or with prehearing and hearing procedures
42 required under sections 1 to 16 of this 2007 Act. The chair may dismiss a claim or order that
43 a school district is in default under this subsection only upon a motion by the chair or any
44 party, and after providing notice and opportunity to be heard to all parties.

45 (3) Unless the chair specifies otherwise in an order for dismissal, a dismissal under this

1 section is with prejudice for purposes of all proceedings before the panel arising out of the
2 notice of claim. If the chair dismisses a claim with prejudice, the chair shall prepare a panel
3 findings statement as required by section 12 of this 2007 Act showing the school district as
4 the prevailing party. If the chair orders that a school district is in default, the chair shall
5 prepare a panel findings statement as required by section 12 of this 2007 Act showing the
6 claimant as the prevailing party.

7 **SECTION 12. Panel findings.** (1) Within 10 days after the conclusion of the parties' pres-
8 entations at a hearing, a legal review panel shall make findings in writing and file the
9 findings with the circuit court for the county in which the notice of claim was filed. The
10 findings shall be signed by the chair of the panel and indicate the vote of each panel member.

11 (2) The chair shall serve a copy of the panel's findings upon the parties by registered or
12 certified mail within 10 days after the date of the findings. The presiding judge of the circuit
13 court for the county in which the notice of claim is filed shall retain a record of the hearing,
14 including the findings and the notice of claim. The records shall be sealed by the presiding
15 judge, stored and destroyed in accordance with the circuit court's practices and procedures.
16 The chair shall return all records to the parties that furnished the records upon issuance
17 of the panel's findings.

18 **SECTION 13. Admissibility of panel findings in subsequent proceedings.** (1) The findings
19 of a legal review panel may be admitted in a subsequent proceeding only in the form specified
20 in this section. The chair of the panel shall complete a panel findings statement certifying
21 the findings of the panel and shall file the completed statement in the circuit court within
22 the time period allowed by section 12 (1) of this 2007 Act.

23 (2) A panel findings statement must be in the following form:
24 _____
25

26 Pursuant to sections 1 to 16 of this 2007 Act, I certify the accuracy of the following. A
27 notice of claim(s) was filed in the Circuit Court for _____ County on _____ (date).
28 A legal review panel was appointed under sections 1 to 16 of this 2007 Act to review claim-
29 ant's claim of [insert specific type of claim] _____ asserted by [insert name
30 of claimant] _____ against [insert name of school
31 district] _____. The findings of the panel are not binding on any Oregon jury
32 or other trier of fact and may be disregarded by the same.

33 At least a majority of the panel finds:

34 (A) _____ In favor of the school district.

35 (B) _____ In favor of the claimant.

36 /s/ _____

37 Legal review panel Chair

_____ Date

38 _____
39
40 **SECTION 14. Panel member compensation.** Members of legal review panels shall be
41 compensated at a rate of not less than \$_____ per hour. The Chief Justice of the Supreme
42 Court shall review the hourly rate once every two years, and shall adjust the amount by rule
43 when the Chief Justice deems that an adjustment in the amount is necessary to ensure an
44 adequate number of persons willing and qualified to serve on panels.

45 **SECTION 15. Tolling of statute of limitations.** The applicable statute of limitations for

1 any civil action based on a claim against a school district is tolled from the date that a notice
2 of claim is filed with a circuit court under section 4 of this 2007 Act until 30 calendar days
3 after the date upon which the legal review panel's findings statement is filed with the circuit
4 court under section 12 of this 2007 Act.

5 **SECTION 16. Rules.** The Chief Justice of the Supreme Court shall adopt rules to imple-
6 ment the provisions of sections 1 to 16 of this 2007 Act, including rules for proceedings before
7 legal review panels.

8 **SECTION 17. Operative date.** (1) Except as provided in subsection (2) of this section,
9 sections 1 to 16 of this 2007 Act become operative on January 1, 2008.

10 (2) Sections 1 to 16 of this 2007 Act become operative on the effective date of this 2007
11 Act for the purposes of:

12 (a) The creation of source and master lists under section 6 of this 2007 Act; and

13 (b) The adoption of rules under section 16 of this 2007 Act.

14 **SECTION 18.** The section captions used in this 2007 Act are provided only for the con-
15 venience of the reader and do not become part of the statutory law of this state or express
16 any legislative intent in the enactment of this 2007 Act.

17