

Enrolled Senate Bill 379

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CHAPTER

AN ACT

Relating to the Oregon State Bar; amending ORS 9.025, 9.030, 9.040, 9.042 and 9.152; and declaring an emergency.

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

SECTION 1. ORS 9.025, as amended by section 1, chapter 218, Oregon Laws 2009, is amended to read:

9.025. (1) The Oregon State Bar shall be governed by a board of governors consisting of 18 members. Fourteen of the members shall be active members of the Oregon State Bar, who *[on]* **at the time of** appointment, *[on nomination]* **at the time of filing a statement of candidacy**, *[on]* **at the time of** election, and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices. Four of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and *[shall]* **may** not be active or inactive members of the Oregon State Bar. *[No]* **A** person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, **may not** serve on the board of governors. Any other person in the executive or legislative department of state government who is otherwise qualified may serve on the board of governors.

(2) *[For the purpose of eligibility for nomination and to vote in the election of a member of the board of governors who is an elective member, and for appointment to the board of governors, the State of Oregon shall be divided into regions determined by the board.]* **The board of governors shall divide the State of Oregon into regions for the purpose of determining eligibility to be a candidate for the board of governors, eligibility to be elected or appointed to the board of governors, and eligibility to vote in board of governors elections.** The *[board shall establish board]* regions *[that are]* **shall be** based on the number of attorneys who have their principal offices in the region. To the extent that it is reasonably possible, the regions shall be configured by the board so that the representation of board members to attorney population in each region is equal to the representation provided in other regions. At least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation.

(3) Members of the board of governors may be elected only by the active members of the Oregon State Bar who maintain their principal offices in the regions established by the board. The regular term of a member of the board is four years. The board may establish special terms for positions that are shorter than four years for the purpose of staggering the terms of members of the board. *[The board must identify positions with special terms before accepting nominating petitions for the positions.]* **The board must identify a position with a special term before accepting statements of candidacy for the region in which the position is located. The board shall establish rules for determining which of the elected members for a region is assigned to the position with a special term.**

(4) No judge of a municipal, state or federal court or any other full-time judicial officer, shall be eligible for appointment or election to the board of governors.

(5) The term of any member of the board of governors shall terminate on the date of the death or resignation of the member, or if the member of the board is required to be a member of the Oregon State Bar, the term terminates on the date:

(a) Of the termination of active membership in the Oregon State Bar for any reason;

(b) When the member discontinues to maintain the principal office of law practice in the region in which it was maintained at the time of the appointment or election of the member; or

(c) When the member assumes office as a judge of a municipal, state or federal court, or fills a full-time judicial office.

(6) No member of the board of governors shall be eligible, during the term of office, for service pro tempore as a judge of any municipal, state or federal court.

SECTION 2. ORS 9.030 is amended to read:

9.030. (1) **An active** *[members]* **member of the Oregon State Bar** shall vote *[in and be eligible for nomination and election to]* **for members of the board of governors and house of delegates** *[from]* **representing the region in which** *[they maintain their principal offices]* **the bar member maintains the member's principal office.**

(2) **An active member of the Oregon State Bar is eligible to be a candidate for, and to be appointed or elected to, the board of governors or house of delegates to represent the region in which the bar member maintains the member's principal office.**

SECTION 3. ORS 9.040 is amended to read:

9.040. (1) The election of governors shall be held annually on a date set by the board of governors. *[Nomination shall be by petition signed by at least 10 members entitled to vote for such nominee.]* **The election shall be by ballot. Any member of the Oregon State Bar who is eligible to serve as a governor for a region may file a signed statement of candidacy for the region.** *[Nominating petitions]* **Statements of candidacy** must be filed with the executive director of the bar. The board shall establish a deadline for filing *[nominating petitions]* **statements of candidacy.**

[(2)(a) The executive director shall mail ballots, containing the nominations for the office of governor in each region, to every eligible active member in such region. Ballots must be returned in person or by mail to the executive director on or before the day of the election in order to be counted. The executive director shall canvass the votes and record the result thereof.]

(2)(a) The executive director shall mail ballots containing the names of the candidates for the office of governor in each region to every active member in the region. Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director on or before the day of the election. The executive director shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections in lieu of using mailed ballots under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall

be [so] conducted so that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

(4) [Notwithstanding subsection (1) of this section, the board may not conduct an election for any position for which only a single candidate has been nominated. If only a single candidate has been nominated, the board shall declare the single candidate elected to the position on a date specified by the board.] **Notwithstanding subsection (1) of this section, the board may not conduct an election for a region if the number of candidates for the region is equal to or less than the number of open positions for the region. If the number of candidates for the region is equal to or less than the number of open positions for the region, the board shall declare the candidate or candidates elected on a date specified by the board.**

(5) A vacancy in the office of elective member of the board of governors that occurs more than 24 months before the expiration of the term shall be filled for the remainder of the term by a governor elected at a special election held in the manner provided in this section as soon as possible after the occurrence of the vacancy, or as provided in subsection (4) of this section if [only a single candidate is nominated] **there is only one candidate.** The vacancy may be filled for the period between the occurrence of the vacancy and the election of a new governor by a person appointed by the board. A vacancy in the office of elective member that occurs 24 months or less before the expiration of the term shall be filled for the remainder of the term by a person appointed by the board.

(6) A vacancy in the office of public member of the board of governors shall be filled for the remainder of the term by a governor appointed by the board.

SECTION 4. ORS 9.042 is amended to read:

9.042. (1) Upon the written request of any member of the bar, or upon the board's own motion, the board of governors shall determine the eligibility of a candidate for the board. A request under this section must be filed with the executive director within 30 days after the final day on which [nominating petitions for the board] **statements of candidacy** are required to be filed. The board shall give written notice of the request to the candidate whose eligibility will be determined. The board shall provide an opportunity to the candidate to respond on the issue of the candidate's eligibility.

(2) The board shall give written notice to the candidate, and to any member of the bar who has requested a determination on the eligibility of the candidate under the provisions of this section, of the board's determination on the candidate's eligibility. The notice must be given not later than 75 days after the final day on which [nominating petitions for the board] **statements of candidacy** are required to be filed. The notice shall state the specific grounds for the board's determination.

(3) A candidate, or a member of the bar who has requested a determination on the eligibility of a candidate under the provisions of this section, may file a petition for review of the board's determination with the Supreme Court. The petition for review must be filed within 15 days only after notice is given to a candidate or member under subsection (2) of this section.

(4) Upon the timely filing of a petition for review under subsection (3) of this section, the Supreme Court has jurisdiction to resolve all issues arising under the Oregon Constitution, state statutes, rules of the court and rules of the board that are related to the eligibility of candidates for the board.

(5) The board of governors shall establish procedures for the implementation of subsections (1) and (2) of this section. The procedures shall be designed to [insure] **ensure** that there will be a final determination on the eligibility of a candidate for the board no later than 10 days before the mailing of the ballots to members of the bar in the election that is affected by the determination.

(6) This section provides the exclusive procedure for challenging the eligibility of a candidate for the board. No other administrative or judicial proceeding may be brought to challenge the eligibility of a candidate for the board.

SECTION 5. ORS 9.152 is amended to read:

9.152. (1) The election of delegates to the house of delegates shall be held annually on a date set by the board of governors. [Except as provided in subsection (2) of this section, nominations shall be made by petition signed by at least 10 members of the Oregon State Bar entitled to vote for a dele-

gate in the election.] The election shall be by ballot. **Any member of the Oregon State Bar who is eligible to serve as a member for a region may file a signed statement of candidacy for the region.** [*Nominating petitions*] **Statements of candidacy** must be filed with the executive director of the state bar at least 30 days before the election.

(2)(a) The executive director shall mail ballots containing the [*nominations*] **names of the candidates** for the office of delegate in each region to every active member in the region. Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director on or before the day of the election. The executive director[, *with any assistants that the executive director may designate,*] shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections in lieu of using mailed ballots under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

[*(3) The candidate, or candidates if there is more than one open position, receiving the highest number of votes in each region for the position or positions being filled shall be declared elected. Balloting shall be conducted in a manner than ensures that only active members of the bar can vote and that the secrecy of the ballots shall be preserved.*]

[*(4) The nomination petition for a delegate from the region composed of all areas not located in this state need only be signed by the candidate for the position.*]

[*(5) Notwithstanding subsection (1) of this section, an election shall not be held for any position for which only a single candidate has been nominated. If only a single candidate has been nominated, the board shall declare the single candidate elected to the position on a date specified by the board.*]

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall be conducted so that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

(4) Notwithstanding subsection (1) of this section, the board may not conduct an election for a region if the number of candidates for the region is equal to or less than the number of open positions for the region. If the number of candidates for the region is equal to or less than the number of open positions for the region, the board shall declare the candidate or candidates elected on a date specified by the board.

SECTION 6. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate March 3, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 26, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State