

# House Bill 2451

Sponsored by Representative CONGER (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**.

Requires transfer of case from Supreme Court to Court of Appeals if it is impossible to appoint sufficient judges pro tempore to Supreme Court to replace disqualified judges. Provides that decision of Court of Appeals in case is final.

Directs Supreme Court to appoint judges pro tempore to Court of Appeals as necessary to replace disqualified judges. Provides qualifications for eligibility as judge pro tempore of Court of Appeals.

Provides that decision in which judge who is disqualified participated is void unless it was impossible to replace disqualified judge with judge pro tempore who would not have been disqualified.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to judges; creating new provisions; amending ORS 2.111, 2.570, 14.210 and 14.275; and de-  
3 claring an emergency.

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

5 **SECTION 1. (1) A judge of the Supreme Court who is disqualified from participating in**  
6 **a case under ORS 14.210 must be replaced for that case by a judge pro tempore who would**  
7 **not be disqualified from participating in the case under ORS 14.210.**

8 **(2) If it is not possible to appoint sufficient judges pro tempore to the Supreme Court**  
9 **who would not be disqualified under ORS 14.210, but there would be sufficient qualified judges**  
10 **of the Court of Appeals, including persons appointed as judges pro tempore to the Court of**  
11 **Appeals under ORS 2.570 (3), to decide the case, the Supreme Court does not have jurisdic-**  
12 **tion of the case and the case must be referred to the Court of Appeals.**

13 **(3) If a case is referred to the Court of Appeals under subsection (2) of this section, the**  
14 **decision of the Court of Appeals on the case is final and may not be further reviewed.**

15 **SECTION 2. ORS 2.111 is amended to read:**

16 2.111. (1) In hearing and determining causes, the Supreme Court may sit all together or in de-  
17 partments.

18 (2) A department shall consist of not less than three nor more than five judges. For convenience  
19 of administration, each department may be numbered. The Chief Justice shall from time to time  
20 designate the number of departments and make assignments of the judges among the departments.  
21 The Chief Justice may sit in one or more of the departments and when so sitting may preside. The  
22 Chief Justice shall designate a judge to preside in each department.

23 (3) The majority of any department shall consist of regularly elected and qualified judges of the  
24 Supreme Court, **unless a majority of a department is required to be replaced with judges pro**  
25 **tempore under section 1 of this 2013 Act.**

26 (4) The Chief Justice shall apportion the business to the departments. Each department shall  
27 have power to hear and determine causes and all questions which may arise therein, subject to

**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 subsection (5) of this section. The presence of three judges is necessary to transact business in any  
 2 department, except such as may be done in chambers by any judge. The concurrence of three judges  
 3 is necessary to pronounce a judgment.

4 (5) The Chief Justice or a majority of the regularly elected and qualified judges of the Supreme  
 5 Court at any time may refer a cause to be considered en banc. When sitting en banc, the court may  
 6 include not more than two judges pro tempore of the Supreme Court **unless more than two judges**  
 7 **are required to be replaced with judges pro tempore under section 1 of this 2013 Act.** When  
 8 the court sits en banc, the concurrence of a majority of the judges participating is necessary to  
 9 pronounce a judgment, but if the judges participating are equally divided in their views as to the  
 10 judgment to be given, the decision being reviewed shall be affirmed.

11 (6) The Chief Justice may rule on motions and issue orders in procedural matters in the Supreme  
 12 Court.

13 (7) A judge or judge pro tempore of the Supreme Court may participate in the decision of the  
 14 matter without resubmission of the cause even though the judge is not present for oral argument  
 15 on the matter.

16 (8) A judge or judge pro tempore of the Supreme Court may participate in the decision of a  
 17 matter without resubmission of the cause in the following circumstances:

18 (a) The judge was appointed or elected to the Supreme Court after submission of the cause.

19 (b) The judge is participating in the decision of a cause that was submitted to a department, and  
 20 the judge is participating in lieu of a judge of the department who died, became disabled, was dis-  
 21 qualified or was otherwise unable to participate in the decision of a cause submitted to the depart-  
 22 ment.

23 (c) The judge is considering a cause en banc, but the judge was not part of the department that  
 24 originally considered the cause.

25 **SECTION 3.** ORS 2.570 is amended to read:

26 2.570. (1) In hearing and determining causes, the judges of the Court of Appeals may sit together  
 27 or in departments.

28 (2)(a) Except as provided in paragraph (b) of this subsection, a department shall consist of three  
 29 judges. For convenience of administration, each department may be numbered. The Chief Judge  
 30 shall from time to time designate the number of departments and make assignments of the judges  
 31 among the departments. The Chief Judge may sit in one or more departments and when so sitting  
 32 may preside. The Chief Judge shall designate a judge to preside in each department.

33 (b) The Chief Judge may order that a department consist of two judges unless a third judge is  
 34 necessary to break a tie vote by the department.

35 (3) Except as provided in this subsection, the majority of any department shall consist of regu-  
 36 larly elected or appointed judges of the Court of Appeals. If disqualifications, recusals or other  
 37 events reduce the number of available judges to fewer than the necessary number of judges, the  
 38 Supreme Court *[may]* **shall** appoint *[such number of]* qualified persons as *[may be]* necessary as pro  
 39 tempore members of the Court of Appeals. **A person is eligible for appointment under this sub-**  
 40 **section if the person is a resident of this state and has been a member in good standing of**  
 41 **the Oregon State Bar for at least seven years preceding the appointment.**

42 (4) The Chief Judge shall apportion the business of the court between the departments. Each  
 43 department shall have power to hear and determine causes, and all questions that may arise therein,  
 44 subject to subsection (5) of this section. The presence of two judges is necessary to transact business  
 45 in any department, except such business as may be transacted in chambers by any judge. The con-

1 currence of two judges is necessary to pronounce judgment.

2 (5) The Chief Judge or a majority of the regularly elected or appointed judges of the Court of  
 3 Appeals at any time may refer a cause to be considered en banc. When sitting en banc, the court  
 4 may include not more than two judges pro tempore of the Court of Appeals. When the court sits en  
 5 banc, the concurrence of a majority of the judges participating is necessary to pronounce judgment,  
 6 but if the judges participating are equally divided in their view as to the judgment to be given, the  
 7 judgment appealed from shall be affirmed.

8 (6) The Chief Judge may rule on motions and issue orders in procedural matters in the Court  
 9 of Appeals or may delegate the authority to rule on motions and issue orders in procedural matters  
 10 to an appellate commissioner as provided for in the court's rules of appellate procedure.

11 (7) A judge or judge pro tempore of the Court of Appeals may participate in the decision of the  
 12 matter without resubmission of the cause even though the judge is not present for oral argument  
 13 on the matter.

14 (8) A judge or judge pro tempore of the Court of Appeals may participate in the decision of a  
 15 matter without resubmission of the cause in the following circumstances:

16 (a) The judge was appointed or elected to the Court of Appeals after submission of the cause.

17 (b) The judge is participating in the decision of a cause that was submitted to a department, and  
 18 the judge is participating in lieu of a judge of the department who has died, become disabled, is  
 19 disqualified or is otherwise unable to participate in the decision of a cause submitted to the de-  
 20 partment.

21 (c) The judge is considering a cause en banc, but the judge was not part of the department that  
 22 originally considered the cause.

23 **SECTION 4.** ORS 14.210 is amended to read:

24 14.210. (1) A judge shall not act as such in a court of which the judge is a member in any of the  
 25 following circumstances:

26 (a) The judge shall not act as judge if the judge is a party to or directly interested in the action,  
 27 suit or proceeding, except that the judge shall not be disqualified from acting as such in a case in  
 28 which the judge is added as a party after taking any official action as a judge in the action, suit  
 29 or proceeding, and in that case the judge shall be dismissed as a party without prejudice.

30 (b) Except as provided in ORS 2.111 and 2.570, a judge shall not act as judge if the judge was  
 31 not present and sitting as a member of the court at the hearing of a matter submitted for its deci-  
 32 sion. A judge may sign an order or judgment reflecting a decision made by another judge if, for good  
 33 cause, the judge who made the decision is not available.

34 (c) A judge shall not act as judge if the judge is related to any party, or to the attorney for any  
 35 party, or to the partner or office associate of any such attorney, by consanguinity or affinity within  
 36 the third degree.

37 (d) A judge shall not act as judge if the judge has been attorney in the action, suit or proceeding  
 38 for any party.

39 (e) If appeal is made from a decision of another court, or judicial review of a decision of an  
 40 administrative agency is sought, a judge shall not act as judge on appeal if the judge participated  
 41 in making the decision that is subject to review.

42 **(f) A judge shall not act as judge if the judge's participation in the case would violate the**  
 43 **Oregon Code of Judicial Conduct.**

44 **(2) A decision in which a judge who is disqualified under subsection (1) of this section**  
 45 **participated is void unless it was impossible to replace the disqualified judge with a judge pro**

1 **tempore who would not have been disqualified under subsection (1) of this section.**

2 [(2)] (3) This section does not apply to an application to change the place of trial, or the regu-  
3 lation of the order of business in court. In the circumstances specified in subsection (1)(c) and (d)  
4 of this section, the disqualification shall be deemed waived by the parties unless a motion for dis-  
5 qualification of the judge is made as provided by statute or court rule.

6 **SECTION 5.** ORS 14.275 is amended to read:

7 14.275. A party or an attorney for a party in a cause before the Supreme Court or Court of  
8 Appeals may move to disqualify a judge of the Supreme Court or of the Court of Appeals for one  
9 or more of the grounds specified in ORS 14.210[, *or upon the ground that the judge's participation in*  
10 *the cause would violate the Oregon Code of Judicial Conduct*].

11 **SECTION 6.** (1) **Section 1 of this 2013 Act and the amendments to ORS 14.210 by section**  
12 **4 of this 2013 Act apply only to decisions in which a judge is disqualified from participating**  
13 **that are made on or after the effective date of this 2013 Act.**

14 (2) **Except as provided in subsection (1) of this section, section 1 of this 2013 Act and the**  
15 **amendments to ORS 2.111, 2.570, 14.210 and 14.275 by sections 2 to 5 of this 2013 Act apply**  
16 **to all cases, including cases in which the Legislative Assembly has provided for direct review**  
17 **to the Supreme Court.**

18 **SECTION 7.** **This 2013 Act being necessary for the immediate preservation of the public**  
19 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
20 **on its passage.**

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