

# House Bill 3304

Sponsored by Representative BARNHART

## 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**.

Creates Commission on Fitness of County Clerks to appoint county clerks, hold hearings upon complaint concerning conduct of county clerk and censure or remove county clerks for cause.

Takes effect only if House Joint Resolution 32 (2013) is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in House Joint Resolution 32 (2013).

## A BILL FOR AN ACT

1  
2 Relating to county clerks; creating new provisions; amending ORS 202.110, 204.005, 204.010, 204.016,  
3 204.020, 204.112, 204.126 and 249.091; and prescribing an effective date.

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

5 **SECTION 1. (1) There is created the Commission on Fitness of County Clerks consisting**  
6 **of:**

7 (a) **Three judges appointed by the Supreme Court;**

8 (b) **Three persons appointed by the Board of Governors of the Oregon State Bar from**  
9 **among persons admitted to practice law in this state; and**

10 (c) **Three persons appointed by the Governor who are not qualified under paragraph (a)**  
11 **or (b) of this subsection.**

12 (2) **The term of a member is four years, but whenever a member ceases to meet the**  
13 **qualifications under which the member was appointed, membership shall end. Before the**  
14 **expiration of the term of a member, a successor shall be appointed to perform the functions**  
15 **of a member on the day next following expiration of the term of the member. In case of a**  
16 **vacancy for any cause, the appointing authority shall make an appointment to become im-**  
17 **mediately effective for a four-year term.**

18 (3) **Appointments by the Governor are subject to confirmation by the Senate in the**  
19 **manner provided in ORS 171.562 and 171.565.**

20 (4) **The commission shall select one of its members as chairperson, and another as vice**  
21 **chairperson, for such terms and to perform such functions as the commission shall deter-**  
22 **mine.**

23 (5) **A majority of the commission constitutes a quorum for the transaction of business.**

24 (6) **Official action by the commission requires the approval of a majority of the members**  
25 **of the commission.**

26 (7) **A member of the commission is entitled to compensation and expenses as provided in**  
27 **ORS 292.495.**

28 **SECTION 2. (1) The Commission on Fitness of County Clerks shall:**

29 (a) **Unless otherwise provided by county charter, appoint for each county that has an**  
30 **office of county clerk a person who qualifies under ORS 204.016 to serve as county clerk for**

**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 the term specified in ORS 204.010.

2 (b) Immediately fill any vacancy in the office of county clerk.

3 (c) Upon majority vote of the members of the commission, or upon request of a county  
4 clerk whose conduct is subject to a hearing under section 3 of this 2013 Act, issue any pro-  
5 cesses necessary to compel the attendance of witnesses and the production of any books,  
6 papers, records or documents as may be required.

7 (d) Adopt rules necessary for the performance of its powers and duties under this sec-  
8 tion.

9 (2) The commission may:

10 (a) Subject to the State Personnel Relations Law, appoint such subordinates and em-  
11 ployees as the commission considers necessary to carry out the duties and powers vested in  
12 the commission.

13 (b) Request information from any person with respect to the appointment of a county  
14 clerk.

15 (c) Censure or remove a county clerk for cause pursuant to the procedures in section 3  
16 of this 2013 Act.

17 (d) Request the assistance of and compensate expert witnesses and special counsel.

18 (e) Take and preserve testimony and administer oaths to witnesses on any matter within  
19 its jurisdiction.

20 **SECTION 3.** (1) Upon complaint from any person concerning the conduct of a county  
21 clerk or upon request of a court in the county in which the county clerk is an officer, and  
22 after such investigation as the Commission on Fitness of County Clerks considers necessary,  
23 the commission may:

24 (a) Hold a hearing pursuant to subsection (2) of this section to inquire into the conduct  
25 of the county clerk.

26 (b) Request the Supreme Court to appoint three qualified persons to act as masters, who  
27 shall hold a hearing pursuant to subsection (2) of this section, maintain a record on the  
28 matter referred to them and report to the commission on the conduct of the county clerk.

29 (c) Allow the county clerk to execute a consent to censure or removal. If a consent is  
30 entered into under this paragraph, the county clerk and the commission must enter into a  
31 written stipulation of facts. The consent and stipulation of facts shall be submitted by the  
32 commission to the Supreme Court.

33 (2) When a hearing is held by the commission or by masters as authorized in subsection  
34 (1) of this section, the hearing shall be public and all the testimony and evidence given and  
35 received in the hearing shall be public records. The county clerk shall have the right to be  
36 present at the hearing, to be represented by counsel, to present testimony and evidence and  
37 to cross-examine witnesses.

38 (3) If, after hearing or after considering the record and report of the masters, the com-  
39 mission finds that the conduct of the county clerk justifies censure or removal from office,  
40 the commission shall recommend to the Supreme Court the censure or removal of the  
41 county clerk.

42 **SECTION 4.** (1) If a hearing has been held under section 3 of this 2013 Act, the Supreme  
43 Court shall review the recommendation of the Commission on Fitness of County Clerks, shall  
44 review the record of the proceedings on the law and facts and may receive additional evi-  
45 dence. The Supreme Court may censure the county clerk or it may order the county clerk

1 removed from office.

2 (2) If the commission has agreed to allow the county clerk to execute a consent to  
 3 censure or removal, the Supreme Court shall review the stipulation of facts and the disci-  
 4 plinary action to which the county clerk has consented.

5 (3)(a) If the Supreme Court approves the consent, the court shall censure the county  
 6 clerk or order the county clerk removed from office pursuant to the terms of the consent.

7 (b) If the Supreme Court rejects the consent and stipulation in full, the court shall re-  
 8 mand the matter to the commission for a hearing under section 3 of this 2013 Act. The  
 9 hearing shall be conducted as though the consent and stipulation had never been entered  
 10 into, and the stipulations made by the county clerk may not be considered as evidence by the  
 11 commission in the hearing.

12 (c) If the Supreme Court accepts the stipulation of facts but rejects the disciplinary  
 13 action agreed to by the county clerk and the commission, the court may remand the matter  
 14 to the commission for such further fact-finding as the court may direct on the issue of the  
 15 appropriate discipline for the conduct, and may request that the matter be briefed and ar-  
 16 gued before the court. The Supreme Court may thereafter censure, or enter an order re-  
 17 moving, the county clerk, as the court finds appropriate under the law and the facts.

18 (4) Upon an order for removal, the county clerk shall be removed from office and the  
 19 salary of the county clerk shall cease and the office of the county clerk is vacant on the date  
 20 of the order.

21 **SECTION 5.** (1) Documents filed with the Commission on Fitness of County Clerks and  
 22 the investigation conducted by the commission prior to a hearing pursuant to section 3 of  
 23 this 2013 Act are not public records unless received as competent evidence in the course of  
 24 the hearing.

25 (2) The decision of the commission after hearing or upon review of the record and report  
 26 of masters under section 3 of this 2013 Act is a public record, together with the recommen-  
 27 dations, if any, of the commission to the Supreme Court.

28 (3) A consent to censure or removal executed by a county clerk under section 3 (1)(c) of  
 29 this 2013 Act, and a stipulation of facts entered into between the commission and a county  
 30 clerk under section 3 (1)(c) of this 2013 Act, are not public records until the consent and  
 31 stipulation are submitted to the Supreme Court.

32 (4) Documents filed and testimony given in proceedings under section 3 of this 2013 Act  
 33 are privileged communications that may not be received in evidence in any judicial pro-  
 34 ceedings other than those directly connected with the administration of sections 1 to 8 of  
 35 this 2013 Act unless the privilege is expressly or impliedly waived by the person filing the  
 36 document or testifying in the judicial proceedings or except in a criminal prosecution for  
 37 perjury or false swearing before the commission.

38 (5) Members of the commission, masters appointed pursuant to section 3 of this 2013 Act  
 39 and staff of the commission may not disclose or use any investigation, testimony or docu-  
 40 ments that are not public records as determined under this section for any purpose other  
 41 than in connection with their official duties in the administration of sections 1 to 8 of this  
 42 2013 Act.

43 (6) Notwithstanding subsection (5) of this section, the commission may, upon the request  
 44 of a county clerk who has been the subject of a complaint and proceedings that are not public  
 45 records, state the disposition of the complaint and proceedings and the reasons for its deci-

1 sion when the commission finds that the complaint or proceedings have been publicized and  
 2 fairness requires comment.

3 **SECTION 6.** Any testimony given by a witness compelled to appear before the Commis-  
 4 sion on Fitness of County Clerks or the masters appointed pursuant to section 3 of this 2013  
 5 Act may not be used against the witness in any criminal action or proceeding, and a criminal  
 6 action or proceeding may not be brought against the witness on account of any testimony  
 7 given by the witness, except for perjury or false swearing committed before the commission  
 8 or the masters.

9 **SECTION 7.** (1) Process issued by the Commission on Fitness of County Clerks shall be  
 10 served by a person authorized to serve summons and in the manner prescribed for the ser-  
 11 vice of a summons upon a defendant in a civil action in a circuit court. The process shall be  
 12 returned to the authority issuing the process within 10 days after delivery to the person for  
 13 service, with proof of service as for summons or that the person cannot be found. When  
 14 served outside the county in which the process originated, the process may be returned by  
 15 mail. The person to whom the process is delivered shall indorse on the process the date of  
 16 delivery.

17 (2) Each witness compelled to attend any proceedings under section 3 of this 2013 Act,  
 18 other than an officer or employee of the state, a public corporation, or a political subdivision,  
 19 shall receive for attendance the same fees and mileage allowance allowed by law to a witness  
 20 in a civil case, payable from funds appropriated to the commission.

21 **SECTION 8.** (1) If a person summoned by the Commission on Fitness of County Clerks  
 22 fails to appear to testify or fails to produce any books, papers, records or documents as re-  
 23 quired, or if a person summoned refuses to answer any question pertinent to the subject  
 24 under inquiry before the commission, or the masters appointed pursuant to section 3 of this  
 25 2013 Act, the commission may apply to the circuit court for the county in which the failure  
 26 occurred for an order to the person to attend and testify, or otherwise to comply with the  
 27 demand or request of the commission or the masters.

28 (2) The application to the court shall be by ex parte motion upon which the court shall  
 29 make an order requiring the person against whom the order is directed to comply with the  
 30 demand or request of the commission within three days after service of the order, or within  
 31 such further time as the court may grant, or to justify the failure within that time.

32 (3) The order shall be served upon the person to whom it is directed in the manner re-  
 33 quired by this state for the service of process, which service is required to confer jurisdiction  
 34 upon the court.

35 (4) Failure to obey an order issued by the court under this section is contempt of court.

36 **SECTION 9.** ORS 204.005 is amended to read:

37 204.005. (1) The following county officers shall be elected at the primary election or general  
 38 election, as provided in ORS 249.088:

39 (a) A sheriff.

40 [(b) A county clerk.]

41 [(c)] (b) A county assessor.

42 [(d)] (c) A county treasurer.

43 [(e)] (d) A county commissioner to succeed any commissioner whose term of office expires the  
 44 following January.

45 [(f)] (e) In any county where there is a vacancy from any cause in the office of county commis-

1 sioner, an additional commissioner to fill the vacancy.

2 (2) Unless an adopted county charter or a county ordinance provides otherwise[,]:

3 (a) The governing body of a county shall appoint a county surveyor.

4 (b) **The Commission on Fitness of County Clerks created under section 1 of this 2013 Act**  
 5 **shall appoint a county clerk.**

6 **SECTION 10.** ORS 204.020 is amended to read:

7 204.020. (1)(a) The term of office of each officer elected pursuant to ORS 204.005 commences on  
 8 the first Monday of January next following election to office.

9 (b) **Unless appointed to fill a vacancy, the term of office of a county clerk commences**  
 10 **on the first Monday of January next following the election provided for in ORS 204.005.**

11 (2)(a) Before entering upon any elective office listed in ORS 204.005, the person elected must  
 12 qualify by filing with the county clerk of the county in which the person is elected the person's  
 13 certificate of election, with an oath of office indorsed thereon, and subscribed by the elected person,  
 14 to the effect that the person will support the Constitution of the United States and of this state, and  
 15 faithfully carry out the office being assumed. The person shall also give and file the undertaking  
 16 provided for under subsection (3) of this section.

17 (b) **Before entering upon the office of county clerk, the person appointed must qualify**  
 18 **by filing with the county clerk of the county in which the person is appointed an oath of of-**  
 19 **ice indorsed thereon, and subscribed by the appointed person, to the effect that the person**  
 20 **will support the Constitution of the United States and of this state, and faithfully carry out**  
 21 **the office being assumed. The person shall also give and file the undertaking provided for**  
 22 **under subsection (3) of this section.**

23 (3) A county governing body may require, by ordinance, for the filing by each officer under ORS  
 24 204.005, prior to that officer assuming office, of an official undertaking with such surety as the  
 25 governing body determines necessary or of an irrevocable letter of credit issued by an insured in-  
 26 stitution, as defined in ORS 706.008, in either case in a reasonable amount with the county govern-  
 27 ing body.

28 **SECTION 11.** ORS 204.016 is amended to read:

29 204.016. (1) A person is not eligible to serve in any office [*listed*] **mentioned** in ORS 204.005  
 30 unless the person is a citizen of the United States and an elector under the Oregon Constitution.

31 (2) A person is not eligible to serve in any elective office listed in ORS 204.005 **or as county**  
 32 **clerk**, unless the person meets the requirements of subsection (1) of this section and in addition is  
 33 a resident of the county in which the person [*is elected*] **will serve** for the period of one year pre-  
 34 ceding the [*next*] election **or the person's appointment as county clerk**, except that in counties  
 35 of less than 25,000 population the requirement of residency in the county in which the person [*is*  
 36 *elected*] **will serve** does not apply to an elected county surveyor.

37 (3) A person is not eligible to be a candidate for election or appointment to the office of county  
 38 surveyor unless registered under the laws of this state as a registered professional land surveyor.

39 (4) A person is not eligible to be a candidate for election or appointment to the office of county  
 40 assessor unless:

41 (a) The person has qualified as a registered appraiser or is an appraiser trainee under ORS  
 42 308.015 and if an appraiser trainee, notwithstanding ORS 308.015, becomes a registered appraiser  
 43 within two years after taking office; and

44 (b) The person either has two years of office and accounting experience, including experience  
 45 in office management activities, or has two years of full-time employment in the office of a county

1 assessor.

2 (5) The Department of Revenue shall prepare applications and questionnaires, and obtain infor-  
 3 mation it may deem necessary to determine that a candidate for the office of county assessor has  
 4 met the requirements of subsection (4) of this section, and shall furnish to applicants suitable cer-  
 5 tificates evidencing satisfactory compliance with the required qualifications.

6 **SECTION 12.** ORS 204.112 is amended to read:

7 204.112. (1) Each county governing body shall appoint a county compensation board. A county  
 8 compensation board shall consist of from three to five members, who are knowledgeable in personnel  
 9 and compensation management.

10 (2) The county compensation board shall annually recommend a compensation schedule for the  
 11 *[county elective officers mentioned]* **elective county officers listed** in ORS 204.005 **and the county**  
 12 **clerk.**

13 (3) The county compensation board shall annually review the compensation paid to persons  
 14 comparably employed by the State of Oregon, local public bodies and private businesses within a  
 15 labor market deemed appropriate by the board for each *[elective]* officer **compensated pursuant to**  
 16 **subsection (2) of this section.** The county compensation board shall take into account such factors  
 17 as the number of employees supervised and the size of the budget administered by each *[elective]*  
 18 officer, the duties and responsibilities of each *[elective]* officer, and the compensation paid to subor-  
 19 dinates and other appointed employees who serve in positions of comparable management responsi-  
 20 bility. The county compensation board shall prepare and approve by majority vote a recommended  
 21 compensation schedule for the *[elective]* officers and shall submit the recommended compensation  
 22 schedule to the county governing body.

23 (4) Notwithstanding subsections (1) to (3) of this section, the sheriff's salary shall be fixed in an  
 24 amount which is not less than that for any member of the sheriff's department.

25 **SECTION 13.** ORS 202.110 is amended to read:

26 202.110. (1) The county judge and the county commissioners appointed under ORS 202.100, acting  
 27 as a county court, shall appoint a sheriff, *[a county clerk,]* a county assessor, a county treasurer and  
 28 a county surveyor **and the Commission on Fitness of County Clerks shall appoint a county**  
 29 **clerk.** An officer appointed under this subsection must be an elector of the new county and must  
 30 accept and qualify for the office under ORS 204.016 and 204.020 before beginning service. The offi-  
 31 cers, except the county surveyor, appointed under this subsection shall serve until the first Monday  
 32 in January *[after the election at which their successors are elected]* **next following the election re-**  
 33 **quired under ORS 204.005.** The county surveyor **and county clerk** appointed pursuant to this  
 34 section *[serves]* **serve** for the term specified in ORS 204.010.

35 (2) At the next practicable general election following the appointment, successors to the **elec-**  
 36 **tive** county officers<sup>1</sup>*[, except the county surveyor,]* appointed under subsection (1) of this section shall  
 37 be elected. The successors shall take office on the first Monday in January next following their  
 38 election.

39 (3) All justices and constables in office within the boundaries of any new county shall continue  
 40 to hold office in such new county during the remainder of their term, and shall give bonds to the  
 41 new county of the same amount and in the same manner as previously given to the original county  
 42 in which they were elected or appointed.

43 (4) At each general election following the general election at which the first **elective** county  
 44 officers under this section are elected, a successor shall be elected to fill any expiring term.

45 **SECTION 14.** ORS 204.010 is amended to read:

1 204.010. (1) Except as provided in subsection (2) of this section, the term of office of each officer  
2 mentioned in ORS 204.005 is four years.

3 (2) When two or more county commissioners are elected for one county at a general election  
4 and one of them is elected to fill a vacancy, as provided in ORS 204.005 [(1)(f)] (1)(e), one of them  
5 shall hold office for two years and the others four years.

6 **SECTION 15.** ORS 204.126 is amended to read:

7 204.126. (1) The compensation of any elective county officer **and the county clerk** shall remain  
8 in effect unless changed with the approval of the county budget committee or tax supervising and  
9 conservation commission.

10 (2) Before any change in the compensation of an elective county officer **or the county clerk** is  
11 effective, it must be submitted to and approved by the county budget committee or tax supervising  
12 and conservation commission at a regular meeting or at a special meeting called for that purpose.

13 **SECTION 16.** ORS 249.091 is amended to read:

14 249.091. (1) If a nominating petition or declaration of candidacy is filed by no more than two  
15 candidates for the office of sheriff[,] **or** county treasurer [*or county clerk*] or by no more than two  
16 candidates to fill a vacancy in a nonpartisan office:

17 (a) The candidate or candidates are nominated; and

18 (b) The name or names of the candidate or candidates may not be printed on the ballot at the  
19 nominating election.

20 (2) If a nominating petition or declaration of candidacy is filed by more than two candidates for  
21 the office of sheriff[,] **or** county treasurer [*or county clerk*] or by more than two candidates to fill a  
22 vacancy in a nonpartisan office:

23 (a) Unless a candidate receives a majority of the votes cast for the office, the two candidates  
24 who receive the highest number of votes are nominated.

25 (b) If a candidate receives a majority of the votes cast for the office, that candidate alone is  
26 nominated.

27 (3) The application of this section is subject to the provisions of a home rule charter.

28 **SECTION 17. (1) This 2013 Act does not become effective unless the amendment to the**  
29 **Oregon Constitution proposed by House Joint Resolution 32 (2013) is approved by the people**  
30 **at the regular general election held in November 2014. This 2013 Act becomes effective on the**  
31 **effective date of that amendment.**

32 (2) **On or after the effective date of this 2013 Act as specified in subsection (1) of this**  
33 **section, the Commission on Fitness of County Clerks shall first appoint a county clerk under**  
34 **section 2 of this 2013 Act in each county that has an office of county clerk, the appointment**  
35 **to become effective on the earlier of:**

36 (a) **The day after any vacancy in the office of county clerk occurs; or**

37 (b) **The date provided in ORS 204.020 (1).**

38