

House Bill 2828

Sponsored by Representative POST; Representatives HACK, HUFFMAN, NEARMAN, NOBLE, OLSON, RESCHKE, WILSON, WITT, Senators BOQUIST, KRUSE, OLSEN, THATCHER, THOMSEN

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**.

Modifies procedures of Commission on Judicial Fitness and Disability.

A BILL FOR AN ACT

1
2 Relating to the Commission on Judicial Fitness and Disability; creating new provisions; and amend-
3 ing ORS 1.415, 1.420, 1.425, 1.430, 1.440, 1.450, 1.470 and 1.475.

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

5 **SECTION 1.** ORS 1.415 is amended to read:

6 1.415. (1) The Commission on Judicial Fitness and Disability may:

7 (a) Subject to the State Personnel Relations Law, appoint such subordinates and employees as
8 the commission considers necessary to carry out the duties and powers vested in the commission.

9 (b) Request the assistance of and compensate physicians, expert witnesses and special counsel.

10 (c) By its chairperson or vice chairperson, take and preserve testimony and administer oaths to
11 witnesses on any matter within its jurisdiction.

12 (2) Upon majority vote of the members of the commission or upon request of a judge whose
13 conduct is subject to a hearing under ORS 1.420 or a judge whose alleged disability is subject to a
14 hearing under ORS 1.425, the chairperson or vice chairperson of the commission **or the presiding**
15 **judge appointed under ORS 1.420** shall issue any processes necessary to compel the attendance
16 of witnesses and the production of any books, papers, records or documents as may be required.

17 (3) The commission shall adopt rules of procedure governing proceedings under ORS 1.420 and
18 1.425.

19 **SECTION 2.** ORS 1.420 is amended to read:

20 1.420. (1) Upon complaint from any person concerning the conduct of a judge or upon request
21 of the Supreme Court, and after such investigation as the Commission on Judicial Fitness and Dis-
22 ability considers necessary, the commission may [*do any of the following*]:

23 (a) [*The commission may hold*] **Request that the Supreme Court initiate** a hearing pursuant
24 to subsection (3) of this section to inquire into the conduct of the judge[.]; **or**

25 [*(b) The commission may request the Supreme Court to appoint three qualified persons to act as*
26 *masters, to hold a hearing pursuant to subsection (3) of this section and maintain a record on the*
27 *matter referred to them and to report to the commission on the conduct of the judge.*]

28 [(c)] **(b)** [*The commission may*] Allow the judge to execute a consent to censure, suspension or
29 removal. If a consent is entered into under this paragraph, the judge and the commission must enter
30 into a written stipulation of facts. The consent and stipulation of facts shall be submitted by the
31 commission to the Supreme Court.

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 (2) If the commission receives a complaint that appears to indicate that a judge has a disability
 2 as defined in ORS 1.303, the commission may refer the complaint to the Chief Justice of the Supreme
 3 Court for appropriate proceedings under ORS 1.303.

4 *[(3) When a hearing is held by the commission or by masters as authorized in subsection (1) of this
 5 section, the hearing shall be public and all the testimony and evidence given and received in the hear-
 6 ing shall be public records. The judge shall have the right to be present at such hearing, to be re-
 7 presented by counsel, to present testimony and evidence and to cross-examine witnesses.]*

8 **(3) When the Supreme Court initiates a hearing under subsection (1) of this section, the
 9 Supreme Court shall appoint a senior judge to preside over the hearing and all matters re-
 10 lated to the hearing, and the commission shall select a hearing panel as provided in section
 11 10 of this 2017 Act. The hearing is public and all the testimony and evidence given and re-
 12 ceived in the hearing are public records. The judge whose conduct is subject to the hearing
 13 has the right to be present at the hearing, to be represented by counsel, to present testimony
 14 and evidence and to cross-examine witnesses. Except as otherwise provided in ORS 1.410 to
 15 1.480, the Oregon Rules of Civil Procedure and the Oregon Evidence Code apply to the pro-
 16 ceeding.**

17 (4) *[If, after hearing or after considering the record and report of the masters, the commission
 18 finds] If the hearing panel unanimously finds by clear and convincing evidence that the conduct
 19 of the judge justifies censure, suspension or removal from office, the [commission] hearing panel
 20 shall recommend to the Supreme Court the censure or suspension or removal of the judge.*

21 (5) The Supreme Court by order may temporarily suspend a judge whose conduct is the subject
 22 of proceedings under this section from exercising any judicial functions during the pendency of those
 23 proceedings.

24 **SECTION 3.** ORS 1.425 is amended to read:

25 1.425. (1) Upon complaint from the Chief Justice of the Supreme Court as provided in ORS 1.303,
 26 and after such investigation as the Commission on Judicial Fitness and Disability considers neces-
 27 sary, the commission may:

28 (a) Proceed as provided in ORS 1.420; or

29 (b) If the investigation under this subsection indicates that the subject judge may have a tem-
 30 porary disability, *[hold a hearing pursuant to subsection (2) of this section to inquire into the alleged
 31 disability, or]* request the Supreme Court to appoint three qualified persons to act as masters, to hold
 32 a hearing pursuant to subsection (2) of this section and maintain a record on the matter referred
 33 to them and to report to the commission **and the Supreme Court** on the alleged disability.

34 (2) When a hearing is held *[by the commission or]* by masters as authorized in subsection (1)(b)
 35 of this section, the hearing *[shall not be]* **is not** open to the public unless the subject judge requests
 36 a public hearing. The testimony and evidence given and received in the hearing *[shall not be]* **are
 37 not** public records. The subject judge *[shall have]* **has** the right to be present at *[such]* **the** hearing,
 38 to be represented by counsel, to present testimony and evidence and to cross-examine witnesses.
 39 **Except as otherwise provided in ORS 1.410 to 1.480, the Oregon Rules of Civil Procedure and
 40 the Oregon Evidence Code apply to the proceeding.**

41 (3)(a) The commission may direct that a subject judge, prior to a hearing **under subsection (2)
 42 of this section**, submit to a physical examination by one, two or three physicians licensed to prac-
 43 tice in this state and appointed by the *[commission]* **masters** to conduct the examination, or submit
 44 to a mental evaluation by one, two or three physicians, psychologists or other mental health pro-
 45 fessionals licensed to practice in this state and appointed by the *[commission]* **masters** to conduct

1 the evaluation, or submit to both that examination and evaluation. The persons appointed to conduct
 2 the examination or evaluation shall report *[thereon to the commission]* **to the masters and the**
 3 **masters shall provide a copy of the report to the subject judge.** *[A copy of any report to the*
 4 *commission shall be provided by the commission to the subject judge.]* The **commission shall pay the**
 5 costs of the examination, evaluation and reporting *[shall be paid by the commission]*.

6 (b) If a subject judge directed to submit to an examination or evaluation fails to do so, the judge
 7 may not present as evidence in the proceeding the results of any medical examination of the judge
 8 done at the instance of the judge, and the *[commission or]* masters may consider the failure of the
 9 judge to submit to examination or evaluation as evidence that the judge has a disability.

10 (4) If, after a hearing, *[or after considering the record and report of the masters, the commission*
 11 *finds]* **the masters find** that the subject judge has a temporary disability, the commission may:

12 (a) Enter into a disposition of the matter with the subject judge, which may include agreement
 13 by the judge to obtain professional counseling, medical treatment or other assistance or to comply
 14 with other conditions in respect to the future conduct of the judge and provide for supervision of
 15 compliance by the judge and for investigation, hearing as provided in subsection (2) of this section
 16 and, if appropriate, action by the commission as provided in paragraph (b) of this subsection if the
 17 judge fails to comply; or

18 (b) If the *[commission also finds]* **masters also find** that the conduct of the subject judge justi-
 19 fies suspension, recommend to the Supreme Court that the judge be suspended without loss of salary
 20 for a period not exceeding one year.

21 (5) The Supreme Court, on its own motion or on recommendation by the commission, by order
 22 may temporarily suspend a judge whose alleged disability is involved in proceedings under this
 23 section from exercising any judicial functions during the pendency of those proceedings.

24 (6) If the *[commission recommends]* **masters recommend** suspension under subsection (4)(b) of
 25 this section, the Supreme Court shall review the record of the proceedings under this section on the
 26 law and facts and may receive additional evidence and permit argument. The Supreme Court may
 27 order the judge suspended without loss of salary for a period not exceeding one year. Upon an order
 28 of suspension, the judge shall be suspended from office for the period specified in the order. Sus-
 29 pension does not create a vacancy in the office of judge during the period of suspension. In addition
 30 to or in lieu of an order of suspension, the Supreme Court may require that the judge obtain pro-
 31 fessional counseling, medical treatment or other assistance or comply with other conditions in re-
 32 spect to the future conduct of the judge.

33 **SECTION 4.** ORS 1.430 is amended to read:

34 1.430. (1) If a hearing has been held under ORS 1.420, the Supreme Court shall review the record
 35 of the proceedings on the law and facts and may receive additional evidence. The Supreme Court
 36 may censure the judge or it may order the judge suspended or removed from office.

37 (2) If the commission has agreed to allow the judge to submit a consent to censure, suspension
 38 or removal, the Supreme Court shall review the stipulation of facts and the disciplinary action to
 39 which the judge has consented. If the Supreme Court approves the consent, the court shall censure
 40 the judge or order the judge suspended or removed from office pursuant to the terms of the consent.
 41 If the Supreme Court rejects the consent and stipulation in full, the court shall remand the matter
 42 *[to the commission]* for a hearing under ORS 1.420. The hearing shall be conducted as though the
 43 consent and stipulation had never been entered into, and the stipulations made by the judge may
 44 not be considered as evidence *[by the commission]* in the hearing. If the Supreme Court accepts the
 45 stipulation of facts but rejects the disciplinary action agreed to by the judge and the commission,

1 the court may [*remand the matter to the commission for such further fact-finding as the court may*
 2 *direct*] **initiate a hearing under ORS 1.420** on the issue of the appropriate discipline for the
 3 conduct[, *and may request that the matter be briefed and argued before the court*]. The Supreme Court
 4 may thereafter censure the judge, or enter an order suspending or removing the judge, as the court
 5 finds appropriate under the law and the facts.

6 (3) Upon an order for removal, the judge shall be removed from office and the salary of the judge
 7 shall cease and the office of the judge is vacant on the date of such order.

8 (4) Upon an order of suspension, the judge shall be suspended from office for the period specified
 9 in the order and the salary of the judge shall cease, if so ordered, from the date of the order until
 10 the end of the specified period. Suspension does not create a vacancy in the office of judge during
 11 the period of suspension.

12 **SECTION 5.** ORS 1.440 is amended to read:

13 1.440. (1) Documents filed with the Commission on Judicial Fitness and Disability and the in-
 14 vestigation conducted by the commission prior to a hearing pursuant to ORS 1.420 or 1.425 [*shall*
 15 *not be*] **are not** public records unless received as competent evidence in the course of a hearing
 16 pursuant to ORS 1.420. The decision of the [*commission after hearing or upon review of the record*
 17 *and report of masters under ORS 1.420 shall be*] **hearing panel under ORS 1.420 is** a public record,
 18 together with the recommendations, if any, of the [*commission*] **hearing panel** to the Supreme Court.
 19 The decision of the [*commission after hearing or upon review of the record and report of*] masters
 20 under ORS 1.425 [*shall not be*] **is not** a public record, except for a decision and recommendation to
 21 the Supreme Court under ORS 1.425 (4)(b). A consent to censure, suspension or removal executed
 22 by a judge under ORS 1.420 [(1)(c)] **(1)(b)**, and a stipulation of facts entered into between the com-
 23 mission and a judge under ORS 1.420 [(1)(c)] **(1)(b)**, [*shall not be*] **is not** a public record until the
 24 consent and stipulation are [*submitted to*] **approved by** the Supreme Court.

25 (2) Documents filed and testimony given in proceedings under ORS 1.420 or 1.425 are privileged
 26 communications which may not be received in evidence in any judicial proceedings other than those
 27 directly connected with the administration of ORS 1.410 to 1.480 unless expressly or impliedly
 28 waived by the person tendering the document to or testifying in such proceedings or except in a
 29 criminal prosecution for perjury or false swearing [*before the commission*].

30 (3) Members of the commission, masters appointed pursuant to ORS [*1.420 or*] 1.425 and staff of
 31 the commission [*shall*] **may** not disclose or use any investigation, testimony or documents [*which*]
 32 **that** are not public records as defined in ORS 1.410 to 1.480 for any purpose other than in con-
 33 nection with their official duties in the administration of ORS 1.410 to 1.480. The commission may,
 34 upon the request of a judge who has been the subject of a complaint and proceedings [*thereon*] that
 35 are not public records, state the disposition of the complaint and proceedings and the reasons for
 36 its decision when the commission finds that the complaint or proceedings have been publicized and
 37 fairness requires such comment.

38 **SECTION 6.** ORS 1.450 is amended to read:

39 1.450. Any testimony given by a witness compelled to appear before the Commission on Judicial
 40 Fitness and Disability, **a hearing panel initiated under ORS 1.420** or the masters appointed pur-
 41 suant to ORS [*1.420 or*] 1.425 [*shall*] **may** not be used against the witness in any criminal action or
 42 proceeding[, *nor shall any*]. **A** criminal action or proceeding **may not** be brought against [*such*] **a**
 43 witness on account of any testimony [*so*] given by the witness, except for perjury or false swearing
 44 [*committed before the commission or the masters*].

45 **SECTION 7.** ORS 1.470 is amended to read:

1 1.470. (1) Process issued by the [*commission or*] **Commission on Judicial Fitness and Disabil-**
 2 **ity**, by the chairperson and vice chairperson of the commission [*shall*] **or by the presiding judge**
 3 **appointed under ORS 1.420 must** be served by a person authorized to serve summons and in the
 4 manner prescribed for the service of a summons upon a defendant in a civil action in a circuit court.
 5 The process shall be returned to the authority issuing it within 10 days after its delivery to the
 6 person for service, with proof of service as for summons or that the person cannot be found. When
 7 served outside the county in which the process originated, the process may be returned by mail. The
 8 person to whom the process is delivered shall indorse thereon the date of delivery.

9 (2) Each witness compelled to attend any proceedings under ORS 1.420 or 1.425, other than an
 10 officer or employee of the state, a public corporation, or a political subdivision, shall receive for
 11 attendance the same fees and mileage allowance allowed by law to a witness in a civil case, payable
 12 from funds appropriated to the commission.

13 **SECTION 8.** ORS 1.475 is amended to read:

14 1.475. (1) Whenever a person summoned by the Commission on Judicial Fitness and Disability
 15 **or by the presiding judge appointed under ORS 1.420** fails to appear to testify or fails to produce
 16 any books, papers, records or documents as required, or whenever any person so summoned refuses
 17 to answer any question pertinent to the subject under inquiry before the commission, or the masters
 18 appointed pursuant to ORS [*1.420 or*] 1.425, the commission may apply to the circuit court for the
 19 county in which the failure occurred for an order to the person to attend and testify, or otherwise
 20 to comply with the demand or request of the commission [*or*], the masters **or the judge**.

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

25 (3) The order shall be served upon the person to whom it is directed in the manner required by
 26 this state for the service of process, which service is required to confer jurisdiction upon the court.
 27 Failure to obey an order issued by the court under this section is contempt of court.

28 **SECTION 9. Sections 10 and 11 of this 2017 Act are added to and made a part of ORS 1.410**
 29 **to 1.480.**

30 **SECTION 10.** (1) **When the Commission on Judicial Fitness and Disability initiates a**
 31 **hearing under ORS 1.420, the commission shall summon a hearing panel consisting of six**
 32 **members selected from the master jury lists prepared under ORS 10.215, as follows:**

33 (a) **If the judge subject to the hearing is a circuit court judge, the commission shall select**
 34 **the members of the hearing panel from the master jury lists for the county or counties in**
 35 **the judicial district in which the judge serves.**

36 (b) **If the judge subject to the hearing is a judge of the Supreme Court, the Court of**
 37 **Appeals or the Tax Court, the commission shall select the members of the hearing panel**
 38 **from all of the master jury lists for all of the counties of the state.**

39 (2) **The commission shall pay fees and reimbursements to members of the hearing panel**
 40 **as provided in ORS 10.061 and 10.065 from funds available for that purpose.**

41 (3) **If a person summoned to serve on a hearing panel under this section fails to attend,**
 42 **the presiding judge appointed under ORS 1.420 shall order the person to appear and show**
 43 **cause for that failure. If the person fails to appear pursuant to the order or appears and fails**
 44 **to show good cause, the presiding judge may impose remedial or punitive sanctions for con-**
 45 **tempt of court.**

1 **(4) The commission shall adopt rules for summoning members of a hearing panel.**

2 **(5) The State Court Administrator shall make the master jury lists prepared under ORS**
3 **10.215 available to the commission for purposes of selecting members of a hearing panel un-**
4 **der ORS 1.420.**

5 **SECTION 11. The Supreme Court may award attorney fees to a judge who prevails in a**
6 **proceeding under ORS 1.410 to 1.480.**

7 **SECTION 12. Sections 10 and 11 of this 2017 Act and the amendments to ORS 1.415, 1.420,**
8 **1.425, 1.430, 1.440, 1.450, 1.470 and 1.475 by sections 1 to 8 of this 2017 Act apply only to**
9 **complaints about judges received by the Commission on Judicial Fitness and Disability on**
10 **or after the effective date of this 2017 Act.**

11