

SB 807 -1, -2, -3 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/27, 3/22

WHAT THE MEASURE DOES:

Permits a presiding judge or a judge who is the subject of a motion to disqualify the judge from a case to require an attorney, firm, district attorney's office or public defender's office to assert under oath facts upon which the judge's impartiality may reasonably be questioned, when the motion follows other disqualification motions filed by the same attorney, firm, or office which have effectively denied the judge assignment to a criminal or juvenile delinquency docket. Allows the judge moved against to provide additional facts and considerations, in writing and under oath. Requires a disinterested judge to make an objective inquiry, based on the motion and affidavits, and determine whether a reasonable person would believe that the subject judge lacks impartiality. Places the burden of proof by preponderance of the evidence on the moving party. Grants the disinterested judge authority to bar the attorney, firm, or office from filing further motions to disqualify the subject judge for a period of up to six months, or take other appropriate action, if the attorney, firm, or office fails to prove the judge lacks impartiality.

REVENUE: Has no revenue impact

FISCAL: Has minimal fiscal impact

ISSUES DISCUSSED:

- Examples of some district attorneys filing blanket disqualification motions
- Difficulty of proving an attorney's intention in filing a disqualification motion
- Effect of disqualifications in small judicial districts with very few judges

EFFECT OF AMENDMENT:

-1 Specifies that the process would apply when a motion or series of motions effectively prevents the judge from assignment to a criminal or juvenile docket.

-2 Makes conforming change within section to refer to "a motion or series of motions" filed by an attorney, firm, or office, instead of "motions."

-3 Incorporates -1 and -2 amendments. Adds parties and defense consortia to motion filers subject to challenge if a motion or multiple motions filed effectively deny a judge assignment to a criminal or juvenile delinquency docket. Permits the subject judge to challenge the motion or motions on these grounds, and need not wait until a subsequent motion is filed after the judge has been effectively disqualified from the docket. Removes requirement that challenge be decided without oral hearing. Permits the subject judge to request a hearing. Removes detailed procedural specifications; procedure may be provided by rules promulgated by the Chief Justice. Extends permissible length to one year for an order preventing the motion filer from filing additional motions if the disinterested judge's objective inquiry does not establish that a reasonable person would believe the subject judge lacks impartiality.

BACKGROUND:

ORS 14.260 permits a party to file a motion to disqualify a judge from assignment to a case within a specified time after notification of the assignment, if the party or attorney affirms under oath that they believe they cannot have a fair and impartial trial or hearing before the judge. The party or attorney need not articulate the specific facts the belief is based on. The statute also permits a judge to challenge a motion to disqualify by proving that the

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motion was made in bad faith or for the purposes of delay. The burden of proof is on the judge.

SB 807 would allow a judge to challenge a motion or motions to disqualify the judge when the motion or motions effectively deny the judge's assignment to a criminal or juvenile delinquency docket, by requesting a hearing before a disinterested judge to conduct an objective inquiry into whether a reasonable person would believe that the judge lacks impartiality, and places the burden of proof on the motion filer.