

Senate Bill 490

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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**.

Changes title of executive director of Oregon State Bar to chief executive officer of Oregon State Bar.

Removes provisions relating to mailing ballots for voting by bar.

Allows board of governors to assess late payment penalty on member delinquent in payment of fees or contributions.

Eliminates position of vice president of board of governors of bar.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to administration of the Oregon State Bar; creating new provisions; amending ORS 9.005, 9.040, 9.042, 9.050, 9.060, 9.070, 9.100, 9.148, 9.152, 9.155, 9.200 and 9.675; and declaring an emergency.

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

CHIEF EXECUTIVE OFFICER, VOTING AND LATE PAYMENT PENALTY

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 9.005 to 9.757.

SECTION 2. Chief executive officer. The board of governors shall appoint a chief executive officer of the Oregon State Bar. The chief executive officer is the chief administrative employee of the bar. The chief executive officer may, but need not, be a member of the bar. The chief executive officer serves at the board's discretion and shall perform such duties as the board prescribes.

SECTION 3. ORS 9.005 is amended to read:

9.005. As used in ORS 9.005 to 9.757, unless the context or subject matter requires otherwise:

(1) "Attorney" and "member" mean a member of the bar.

(2) "Board" and "board of governors" mean the board of governors of the bar.

(3) "Delegate" means a delegate of the house of delegates of the Oregon State Bar.

[(4) "Executive director" means the chief administrative employee of the bar, appointed by the board. The executive director may, but need not be, a member of the bar; and the executive director shall serve at the board's discretion and shall perform such duties as the board shall prescribe.]

[(5)] (4) "Governor" means a member of the board of governors of the bar.

[(6)] (5) "House" and "house of delegates" mean the house of delegates of the Oregon State Bar.

[(7)] (6) "Oregon State Bar," "state bar" and "bar" mean the Oregon State Bar created by the State Bar Act set forth in ORS 9.005 to 9.757.

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 [(8)] (7) “Rules of procedure” means the rules of procedure relative to admission, discipline,
 2 resignation and reinstatement of members of the bar adopted by the board and approved by the
 3 Supreme Court.

4 **SECTION 4.** ORS 9.040 is amended to read:

5 9.040. (1) The election of governors shall be held annually on a date set by the board of gover-
 6 nors. [*The election shall be by ballot.*] Any member of the Oregon State Bar who is eligible to serve
 7 as a governor for a region may file a signed statement of candidacy for the region. Statements of
 8 candidacy must be filed with the [*executive director*] **chief executive officer** of the bar. The board
 9 shall establish a deadline for filing statements of candidacy.

10 (2)(a) The [*executive director shall mail*] **bar shall distribute** ballots containing the names of the
 11 candidates for the office of governor in each region to every active member in the region. [*Ballots*
 12 *may be delivered in person or by mail to the executive director, but must be received by the executive*
 13 *director*] **Voting must be completed** on or before the day of the election. The [*executive director*]
 14 **chief executive officer** shall canvass the votes and record the results of the election.

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

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

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

29 (5) A vacancy in the office of elective member of the board of governors that occurs more than
 30 24 months before the expiration of the term shall be filled for the remainder of the term by a gov-
 31 ernor elected at a special election held in the manner provided in this section as soon as possible
 32 after the occurrence of the vacancy, or as provided in subsection (4) of this section if there is only
 33 one candidate. The vacancy may be filled for the period between the occurrence of the vacancy and
 34 the election of a new governor by a person appointed by the board. A vacancy in the office of
 35 elective member that occurs 24 months or less before the expiration of the term shall be filled for
 36 the remainder of the term by a person appointed by the board.

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

39 **SECTION 5.** ORS 9.042 is amended to read:

40 9.042. (1) Upon the written request of any member of the **Oregon State Bar**, or upon the board’s
 41 own motion, the board of governors shall determine the eligibility of a candidate for the board. A
 42 request under this section must be filed with the [*executive director*] **chief executive officer of the**
 43 **bar** within 30 days after the final day on which statements of candidacy are required to be filed.
 44 The board shall give written notice of the request to the candidate whose eligibility will be deter-
 45 mined. The board shall provide an opportunity to the candidate to respond on the issue of the

1 candidate's eligibility.

2 (2) The board shall give written notice to the candidate, and to any member of the bar who has
3 requested a determination on the eligibility of the candidate under the provisions of this section,
4 of the board's determination on the candidate's eligibility. The notice must be given not later than
5 75 days after the final day on which statements of candidacy are required to be filed. The notice
6 shall state the specific grounds for the board's determination.

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

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

15 (5) The board of governors shall establish procedures for the implementation of subsections (1)
16 and (2) of this section. The procedures shall be designed to ensure that there will be a final deter-
17 mination on the eligibility of a candidate for the board no later than 10 days before the *[mailing]*
18 **distribution** of the ballots to members of the bar in the election that is affected by the determi-
19 nation.

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

23 **SECTION 6.** ORS 9.050 is amended to read:

24 9.050. (1) On petition signed by 25 percent of the members in any region for the recall of any
25 governor elected from that region, the *[executive director]* **chief executive officer of the Oregon**
26 **State Bar** shall serve notice as soon as possible on the governor informing the governor that the
27 petition has been filed. If the governor does not resign within 10 days after the date the notice is
28 served, the *[executive director shall mail]* **chief executive officer shall distribute** ballots to each
29 active member of the bar within the region eligible to vote, submitting the question whether the
30 governor shall be recalled. If a majority of the members voting at the election vote in favor of the
31 recall, the governor is recalled.

32 (2) On the affirmative vote of two-thirds of the entire membership of the board of governors, the
33 board shall refer the question of the recall of any governor from any region to a vote of the mem-
34 bers of that region. The *[executive director]* **chief executive officer** shall serve notice as soon as
35 possible on the governor informing the governor that the board has approved a recall election. If
36 the governor does not resign within 10 days after the notice is served, the *[executive director shall*
37 *mail]* **chief executive officer shall distribute** ballots to each active member of the bar within the
38 region eligible to vote, submitting the question whether the governor shall be recalled. If a majority
39 of the members voting at the election vote in favor of the recall, the governor is recalled.

40 (3) The board of governors shall approve the ballot and any information submitted to the mem-
41 bers in connection with a recall vote.

42 **SECTION 7.** ORS 9.100 is amended to read:

43 9.100. The board shall have prepared annually a statement explaining the financial condition of
44 the **Oregon** State Bar for the 12 months preceding. *[Such statement shall be submitted by the execu-*
45 *tive director promptly]* **The chief executive officer of the bar shall promptly submit the state-**

1 **ment** to the Chief Justice of the Supreme Court.

2 **SECTION 8.** ORS 9.148 is amended to read:

3 9.148. (1) Active members of the Oregon State Bar may participate in the discussion of matters
4 before the house of delegates, but only delegates may vote. The house of delegates may by rule im-
5 pose restrictions on participation by members of the state bar who are not delegates.

6 (2) The board of governors or the house of delegates, acting on its own motion, may refer to the
7 members of the bar by [*mail*] ballot any question or measure considered by the board or house to
8 be appropriate for submission to a vote of the members. Referral may be made under this subsection
9 at any time.

10 (3) Active members of the state bar, by written petition signed by at least two percent of all
11 active members, may have placed on the agenda of a meeting of the house of delegates any question
12 or measure appropriate for a vote of the house. The petition shall contain the full text of the ques-
13 tion or measure proposed. The petition must be filed with the [*executive director*] **chief executive**
14 **officer of the bar** at least 45 days before the annual or special meeting of the house specified in
15 the petition at the meeting when the petitioners seek to have the question or measure considered.

16 (4) Active members of the state bar, by written petition signed by no fewer than five percent
17 of all active members, may request that the board of governors submit to a vote of the members any
18 question or measure. The board of governors shall submit the question or measure to a vote of the
19 members of the bar if the question or measure is appropriate for a vote of the members. The initi-
20 ative petition must contain the full text of the question or measure proposed.

21 **SECTION 9.** ORS 9.152 is amended to read:

22 9.152. (1) The election of delegates to the house of delegates shall be held annually on a date
23 set by the board of governors. The election shall be by ballot. Any member of the Oregon State Bar
24 who is eligible to serve as a member for a region may file a signed statement of candidacy for the
25 region. Statements of candidacy must be filed with the [*executive director of the state*] bar at least
26 30 days before the election.

27 (2)(a) The [*executive director shall mail*] **bar shall distribute** ballots containing the names of the
28 candidates for the office of delegate in each region to every active member in the region. [*Ballots*
29 *may be delivered in person or by mail to the executive director, but must be received by the executive*
30 *director*] **Voting must be completed** on or before the day of the election. The [*executive director*]
31 **chief executive officer** shall canvass the votes and record the results of the election.

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

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

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

1 **SECTION 10.** ORS 9.155 is amended to read:

2 9.155. Upon the filing of a petition with the Oregon State Bar signed by 25 percent of the
3 members of the bar from a region for the recall of a delegate elected from that region, the *[executive*
4 *director]* **chief executive officer of the bar** shall serve notice on the delegate of the filing of the
5 petition. If the delegate does not resign within 15 days after the date that the notice is served, the
6 *[executive director shall mail]* **chief executive officer shall distribute** ballots to each member of the
7 bar within the region. The ballots shall submit the question of whether the delegate should be re-
8 called. If a majority of the members voting in the election vote in favor of the recall, the delegate
9 is recalled and the position held by the delegate becomes vacant upon the *[executive director's]* **chief**
10 **executive officer's** declaration of the results of the election.

11 **SECTION 11.** ORS 9.200 is amended to read:

12 9.200. (1) Any member in default in payment of membership fees established under ORS 9.191 (1)
13 or any member in default in payment of assessed contributions to a professional liability fund es-
14 tablished under ORS 9.080 (2) shall be given written notice of delinquency and a reasonable time to
15 cure the default. The *[executive director]* **chief executive officer** of the Oregon State Bar shall send
16 the notice of delinquency to the member at the member's electronic mail address on file with the
17 bar on the date of the notice. The *[executive director]* **chief executive officer** shall send the notice
18 by mail to any member who is not required to have an electronic mail address on file with the bar
19 under the rules of procedure. If a member fails to pay the fees or contributions within the time al-
20 lowed to cure the default as stated in the notice, the member is automatically suspended. The
21 *[executive director]* **chief executive officer** shall provide the names of all members suspended under
22 this section to the State Court Administrator and to each of the judges of the Court of Appeals,
23 circuit and tax courts of the state.

24 (2) An active member delinquent in the payment of fees or contributions is not entitled to vote.

25 **(3) A member delinquent in the payment of fees or contributions may be assessed a late**
26 **payment penalty determined by the board of governors.**

27 [(3)] (4) A member suspended for delinquency under this section may be reinstated only on
28 compliance with the rules of the Supreme Court and the rules of procedure and payment of all re-
29 quired fees or contributions.

30 **SECTION 12.** ORS 9.675 is amended to read:

31 9.675. (1) An active member of the Oregon State Bar shall certify annually to the bar whether
32 the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more
33 lawyer trust accounts, the member must disclose the financial institution in which each account is
34 held and the account number for each account. The *[executive director of the Oregon State]* **chief**
35 **executive officer of the** bar shall prescribe a form and due date for the certification and disclo-
36 sures required by this section.

37 (2) If a member does not file the certificate and disclosures required by this section within 30
38 days after the due date prescribed under subsection (1) of this section, the *[executive director]* **chief**
39 **executive officer** shall send written notice of the default to the member at the member's electronic
40 mail address on file with the bar on the date of the notice. The *[executive director]* **chief executive**
41 **officer** shall send the notice by mail to any member who is not required to have an electronic mail
42 address on file with the bar under the rules of procedure. If a member does not file the certificate
43 and disclosures required by this section within 60 days after the date of the notice, the person's
44 membership in the bar is automatically suspended. The *[executive director]* **chief executive officer**
45 shall provide the names of all persons suspended under this section to the judges of the circuit

1 courts, the Court of Appeals and the Oregon Tax Court.

2 (3) A person suspended under this section may be reinstated to membership in the bar only if
 3 the person pays all required fees and contributions and complies with all rules of procedure and
 4 rules of the Supreme Court relating to reinstatement.

5
 6 **VICE PRESIDENTS AND IMMEDIATE PAST PRESIDENT**

7
 8 **SECTION 13.** ORS 9.060 is amended to read:

9 9.060. A president[,] **and** president-elect [*and two vice presidents*] shall be elected by the gover-
 10 nors each year immediately following the annual election of governors and before the newly elected
 11 governors have qualified. The president[,] **and** president-elect [*and vice presidents*] shall be elected
 12 from among the attorney board members. All officers shall continue in office until their successors
 13 are elected and qualify. Vacancies in any of the offices shall be filled by the board by appointment
 14 for the remainder of the term. **Upon completion of the term for which the president is elected**
 15 **or appointed, the president becomes the immediate past president and shall serve as a non-**
 16 **voting, ex officio member of the board for one year.** All officers shall take office as provided
 17 by the bar bylaws.

18 **SECTION 14.** ORS 9.070 is amended to read:

19 9.070. (1) The president shall preside at all meetings of the house of delegates and of the board
 20 of governors, and in the president’s absence or inability to act, the president shall designate another
 21 officer to preside. **The board of governors may prescribe** other duties of the president[,] **and**
 22 president-elect [*and vice presidents shall be such as the board of governors may prescribe*].

23 (2) All fees shall be paid into the treasury of the **Oregon** State Bar, and when so paid shall
 24 become part of its funds and shall be disbursed only on order of the board of governors.

25
 26 **CAPTIONS**

27
 28 **SECTION 15.** **The unit and section captions used in this 2017 Act are provided only for**
 29 **the convenience of the reader and do not become part of the statutory law of this state or**
 30 **express any legislative intent in the enactment of this 2017 Act.**

31
 32 **EMERGENCY CLAUSE**

33
 34 **SECTION 16.** **This 2017 Act being necessary for the immediate preservation of the public**
 35 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
 36 **on its passage.**

37 _____