

# Senate Bill 272

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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**.

Directs board of governors of Oregon State Bar to establish deadline for filing nominating petitions for positions on board.

Prohibits employee of bar from electing to become member of Public Employees Retirement System after December 31, 2005. Authorizes bar to provide retirement plan for employees of bar who do not receive benefits from Public Employees Retirement System.

## A BILL FOR AN ACT

1  
2 Relating to Oregon State Bar; amending ORS 9.040 and 9.080.

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

4 **SECTION 1.** 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. Nomination shall be by petition signed by at least 10 members entitled to vote for such nomi-  
7 nee. Election shall be by ballot. Nominating petitions [*shall*] **must** be filed with the executive  
8 director of the bar [*at least 30 days before the election*]. **The board shall establish a deadline for**  
9 **filing nominating petitions.**

10 (2)(a) The executive director shall mail ballots, containing the nominations for the office of  
11 governor in each region, to every eligible active member in such region. Ballots must be returned  
12 in person or by mail to the executive director on or before the day of the election in order to be  
13 counted. The executive director shall canvass the votes and record the result thereof.

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

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

23 (4) Notwithstanding subsection (1) of this section, **the board may not conduct** an election  
24 [*shall not be held*] for any position for which only a single candidate has been nominated. If only a  
25 single candidate has been nominated, the board shall declare the single candidate elected to the  
26 position on a date specified by the board.

27 (5) A vacancy in the office of elective member of the board of governors that occurs more than  
28 24 months before the expiration of the term shall be filled for the remainder of the term by a gov-

**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 ernor elected at a special election held in the manner provided in this section as soon as possible  
2 after the occurrence of the vacancy, or as provided in subsection (4) of this section if only a single  
3 candidate is nominated. The vacancy may be filled for the period between the occurrence of the  
4 vacancy and the election of a new governor by a person appointed by the board. A vacancy in the  
5 office of elective member that occurs 24 months or less before the expiration of the term shall be  
6 filled for the remainder of the term by a person appointed by the board.

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

9 **SECTION 2.** ORS 9.080 is amended to read:

10 9.080. (1) The state bar shall be governed by the board of governors, except as provided in ORS  
11 9.136 to 9.155. The board is charged with the executive functions of the state bar and shall at all  
12 times direct its power to the advancement of the science of jurisprudence and the improvement of  
13 the administration of justice. It shall have the authority to adopt, alter, amend and repeal bylaws  
14 and to adopt new bylaws containing provisions for the regulation and management of the affairs of  
15 the state bar not inconsistent with law.

16 (2)(a) The board shall have the authority to require all active members of the state bar engaged  
17 in the private practice of law whose principal offices are in Oregon to carry professional liability  
18 insurance and shall be empowered, either by itself or in conjunction with other bar organizations,  
19 to do whatever is necessary and convenient to implement this provision, including the authority to  
20 own, organize and sponsor any insurance organization authorized under the laws of the State of  
21 Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active  
22 members of the state bar engaged in the private practice of law whose principal offices are in  
23 Oregon, all sums as may be provided under such plan which any such member shall become legally  
24 obligated to pay as money damages because of any claim made against such member as a result of  
25 any act or omission of such member in rendering or failing to render professional services for others  
26 in the member's capacity as an attorney or caused by any other person for whose acts or omissions  
27 the member is legally responsible. The board shall have the authority to assess each active member  
28 of the state bar engaged in the private practice of law whose principal office is in Oregon for con-  
29 tributions to such fund, to establish definitions of coverage to be provided by such fund and to retain  
30 or employ legal counsel to represent such fund and defend and control the defense against any  
31 covered claim made against such member. The board shall have the further authority to offer op-  
32 tional professional liability coverage on an underwritten basis above the minimum required coverage  
33 limits provided under such fund, either through such fund, through a separate fund or through any  
34 insurance organization authorized under the laws of the State of Oregon, and may do whatever is  
35 necessary and convenient to implement this provision. Any fund so established shall not be subject  
36 to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from  
37 disclosure under ORS 192.410 to 192.505.

38 (b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private  
39 practice of law if the attorney is a full-time employee of a corporation other than a corporation in-  
40 corporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special  
41 district or any other public or municipal corporation or any instrumentality thereof. However, an  
42 attorney who practices law outside of the attorney's full-time employment is engaged in the private  
43 practice of law.

44 (c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is  
45 considered to be the location where the attorney engages in the private practice of law more than

1 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside  
2 Oregon and the main office to which the branch office is connected is in Oregon, the principal office  
3 of the attorney is not considered to be in Oregon unless the attorney engages in the private practice  
4 of law in Oregon more than 50 percent of the time engaged in the private practice of law.

5 (3) The board may appoint such committees, officers and employees as it deems necessary or  
6 proper and fix and pay their compensation and necessary expenses. At any meeting of the board,  
7 two-thirds of the total number of members then in office shall constitute a quorum. It shall promote  
8 and encourage voluntary county or other local bar associations.

9 (4) Except as provided in this subsection, an employee of the state bar shall not be considered  
10 an "employee" as the term is defined in the public employees' retirement laws. However, an em-  
11 ployee of the state bar may, *[at the option of the employee,]* for the purpose of becoming a member  
12 of the Public Employees Retirement System, **elect to** be considered an "employee" as *[the]* **that** term  
13 is defined in the public employees' retirement laws. The *[option, once exercised]* **election must be**  
14 **made** by written notification directed to the Public Employees Retirement Board[,] **and** may not be  
15 revoked subsequently, except as may otherwise be provided by law. **An election under this sub-**  
16 **section may be made at any time after a person commences employment with the bar.** Upon  
17 receipt of such notification by the Public Employees Retirement Board, an employee of the state bar  
18 who would otherwise, but for the exemption provided in this subsection, be considered an  
19 "employee," as *[the]* **that** term is defined in the public employees' retirement laws, shall be so con-  
20 sidered. **If the person has not completed the period of employment required by ORS 238.015**  
21 **at the time the notification is received, the person shall become a member upon completion**  
22 **of the required period of employment.** The state bar and its employees shall be exempt from the  
23 provisions of the State Personnel Relations Law. *[No]* **A member of the state bar [shall be] is not**  
24 considered an "employee" as the term is defined in the public employees' retirement laws, the un-  
25 employment compensation laws and the State Personnel Relations Law solely by reason of member-  
26 ship in the state bar.

27 (5) **An employee of the state bar may not make an election under subsection (4) of this**  
28 **section after December 31, 2005. Any person who is employed by the bar after that date, or**  
29 **who is employed by the bar on January 1, 2006, and has not made the election provided for**  
30 **in subsection (4) of this section before January 1, 2006, may not become a member of the**  
31 **Public Employees Retirement System by reason of employment by the bar or accrue benefits**  
32 **under ORS chapter 238 or 238A by reason of employment by the bar. The board of governors**  
33 **may provide a retirement plan for service by any employee of the bar who does not become**  
34 **a member of the Public Employees Retirement System, or accrue benefits under ORS chap-**  
35 **ter 238 or 238A, by reason of the provisions of this subsection. The board may adopt rules**  
36 **and enter into any contracts necessary for the administration of a retirement plan provided**  
37 **under this subsection.**

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