

**SB 807 A -A4 STAFF MEASURE SUMMARY**

**House Committee On Judiciary**

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**Prepared By:** Patricia Pascone, LPRO Analyst

**Meeting Dates:** 5/8, 5/16

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**WHAT THE MEASURE DOES:**

Provides a process for a judge to challenge a motion or series of motions to disqualify the judge from a criminal or juvenile delinquency case or cases, if the motion(s) effectively denies the judge assignment to a criminal or juvenile delinquency docket. Permits the affected judge to request a hearing from a disinterested judge. Requires the disinterested judge to make an objective inquiry 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 motion filer from further motions to disqualify the subject judge for a period of up to one year, or take other appropriate action, if the inquiry does not establish that a reasonable person would believe the judge lacks impartiality. Permits the Chief Justice to make rules to implement the measure.

*REVENUE: No revenue impact*

*FISCAL: Has minimal fiscal impact*

*SENATE VOTE: Ayes, 16; Nays, 12*

**ISSUES DISCUSSED:**

**EFFECT OF AMENDMENT:**

-A4 Provides that if the inquiry establishes a reasonable person would believe that the judge lacks impartiality, the motion shall be granted to disqualify the judge from the case or cases; if the inquiry does not establish it, the motion shall be denied. Adds applicability of process to a motion or series of motions that would disqualify the judge from a civil docket. Removes provision authorizing the disinterested judge to bar the filer from filing further motions for a period of time or take other action. Removes provision authorizing the Chief Justice to make rules to implement the measure.

**BACKGROUND:**

Under ORS 14.260, a party may file a motion to disqualify a judge from assignment to a case within a specified time after notification of the assignment. The party or attorney must affirm under oath that they believe they cannot have a fair and impartial trial or hearing before the judge, but they need not articulate the specific facts the belief is based on. A judge may challenge a motion to disqualify by proving that the motion was made in bad faith or for the purposes of delay. The burden of proof is on the judge to prove a filer's bad intent.

There have been some instances of "blanket disqualifications," when district attorneys or public defenders move to disqualify a particular judge every time the judge is assigned to one of their cases. If the filer is assigned to most or all of the criminal or juvenile delinquency cases, it may have the effect of disqualifying the judge from all criminal or juvenile delinquency cases in that district. In a judicial district with few judges, it has required bringing a judge from another judicial district to cover the affected criminal docket.

Senate Bill 807 A allows 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 the burden of proof is on the motion filer.

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*This summary has not been adopted or officially endorsed by action of the committee.*