

**Enrolled**  
**House Bill 2640**

Sponsored by Representative BOONE (at the request of Oregon Association of County Clerks)

CHAPTER .....

AN ACT

Relating to elections; and declaring an emergency.

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

**NOVEMBER 2007 SPECIAL ELECTION--  
SENATE JOINT RESOLUTION 4 AND HOUSE BILL 3540**

**SECTION 1.** Except as otherwise provided in this 2007 Act, ORS chapters 250, 251 and 254 apply to the special election held on House Bill 3540 and Senate Joint Resolution 4 (2007).

**SECTION 2. (1)** A special election shall be held throughout this state on November 6, 2007. The measures referred to in section 1 of this 2007 Act and that are referred to the people by the Legislative Assembly shall be submitted to the electors for their approval or rejection at the special election.

(2) Notwithstanding section 25, chapter 424, Oregon Laws 2007 (Enrolled House Bill 3540), House Bill 3540 shall be submitted to the people for their approval or rejection at a special election held throughout this state on November 6, 2007, as provided in sections 1 to 9 of this 2007 Act.

**SECTION 3. (1)** Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for House Bill 3540 shall be:

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**MODIFIES MEASURE 37; CLARIFIES RIGHT TO BUILD HOMES; LIMITS LARGE DEVELOPMENTS; PROTECTS FARMS, FORESTS, GROUNDWATER.**

**RESULT OF "YES" VOTE:** "Yes" vote modifies Measure 37; clarifies private landowners' rights to build homes; extends rights to surviving spouses; limits large developments; protects farmlands, forestlands, groundwater supplies.

**RESULT OF "NO" VOTE:** "No" vote leaves Measure 37 unchanged; allows claims to develop large subdivisions, commercial, industrial projects on lands now reserved for residential, farm and forest uses.

**SUMMARY:** Modifies Measure 37 (2004) to give landowners with Measure 37 claims the right to build homes as compensation for land use restrictions imposed after they acquired their properties. Claimants may build up to three homes if previously allowed when they acquired

their properties, four to 10 homes if they can document reductions in property values that justify additional homes, but may not build more than three homes on high-value farmlands, forestlands and groundwater-restricted lands. Allows claimants to transfer homebuilding rights upon sale or transfer of properties; extends rights to surviving spouses. Authorizes future claims based on regulations that restrict residential uses of property or farm, forest practices. Disallows claims for strip malls, mines, other commercial, industrial uses. See Explanatory Statement for more information.

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(2) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for Senate Joint Resolution 4 (2007) shall be:

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**AMENDS CONSTITUTION: DEDICATES FUNDS TO PROVIDE HEALTH CARE FOR CHILDREN, FUND TOBACCO PREVENTION, THROUGH INCREASED TOBACCO TAX.**

**RESULT OF "YES" VOTE:** "Yes" vote dedicates funds to provide health care for children, low-income adults and medically underserved Oregonians, and fund tobacco prevention programs, through increased tobacco tax.

**RESULT OF "NO" VOTE:** "No" vote rejects proposal to dedicate funding for children's health care, other health care programs, and tobacco prevention programs; maintains tobacco tax at current level.

**SUMMARY:** This measure increases the tobacco tax and dedicates the new revenue to providing health care for children, low-income adults and other medically underserved Oregonians, and to funding tobacco prevention and education programs. The measure increases the tax on cigarettes by 84.5 cents per pack, and increases the tax on other tobacco products. The measure will fund the Healthy Kids Program created by the 2007 legislature to provide affordable health care for uninsured children. The measure will fund tobacco prevention programs, safety net clinics, rural health care and health care for Oregon's lowest income families and individuals through the Oregon Health Plan. If the measure does not pass, these health care programs will not be expanded, and the Healthy Kids Program will not become law.

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(3) ORS 250.085 does not apply to the ballot titles contained in subsections (1) and (2) of this section. The ballot titles contained in subsections (1) and (2) of this section shall be the ballot titles printed in the voters' pamphlet and printed on, or included with, the ballot.

**SECTION 4.** (1) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Bill 3540 to be printed in the voters' pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** The measure would require one-time state administrative expenditures of \$8.7 to \$12.5 million to evaluate claims received to date for adherence to measure requirements.

In the short term, the measure would require state administrative expenditures of \$1 million to \$2 million per biennium to evaluate future claims. In the long term, state administrative costs may be reduced as the measure limits the scope of potential future claims. The amount of those potential reductions cannot be determined.

Potential state litigation costs cannot be determined.

The measure authorizes compensation to landowners. The amount of state expenditures to pay claims for compensation cannot be determined.

The measure authorizes establishing a claims review fee for new claims not to exceed the actual and reasonable cost of reviewing a claim. The impact on state revenues cannot be determined.

The measure clarifies ongoing claims review processes and is expected to reduce local government claim processing costs from current levels. The amount of these potential reductions cannot be determined.

The measure authorizes compensation to landowners. The amount of local government expenditures to pay claims for compensation cannot be determined.

The effect of the measure on local government revenues cannot be determined.

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(2) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for Senate Joint Resolution 4 (2007) to be printed in the voters' pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** This measure increases state revenue by an estimated \$152.7 million for the 2007-2009 budget period. Revenue is estimated to increase \$233.2 million in the following two-year period. These estimates account for a projected decline in the sale of tobacco products because of higher prices. These estimates would be reduced if further restrictions on smoking become law. The additional state revenue generated by this measure would be available to allocate to programs that provide health care for children, low-income adults and other medically vulnerable Oregonians, and to tobacco prevention programs.

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(3) ORS 250.131 does not apply to the financial estimates contained in subsections (1) and (2) of this section. The financial estimates contained in subsections (1) and (2) of this section shall be the financial estimates printed in the voters' pamphlet and printed on, or included with, the ballot.

**SECTION 5.** (1) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for House Bill 3540 shall be:

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Ballot Measure 37 (2004) requires governments to pay landowners or forgo enforcement when certain land use regulations reduce their property values. This measure modifies Measure 37 to give landowners who have filed Measure 37 claims the right to build homes as compensation for land use regulations imposed after they acquired their properties.

Claimants may build up to three homes if allowed when they acquired their properties.

Claimants may build up to 10 homes if allowed when they acquired their properties and they have suffered reductions in property values that justify the additional home sites.

This measure protects farmlands, forestlands and lands with groundwater shortages in two ways.

First, subdivisions are not allowed on high-value farmlands, forestlands and groundwater-restricted lands. Claimants may not build more than three homes on such lands.

Second, claimants may not use this measure to override current zoning laws that prohibit commercial and industrial developments, such as strip malls and mines, on land reserved for homes, farms, forests and other uses.

Also, this measure expands homebuilding rights under Measure 37 in two ways.

First, it extends homebuilding rights to surviving spouses whose claims are not eligible for compensation under Measure 37.

Second, it allows claimants to transfer their homebuilding rights to new owners, a right not clearly provided by Measure 37. The new owners must exercise their homebuilding rights within 10 years.

Claimants will be notified of their options to build homes under this measure within 120 days after this measure takes effect.

Claimants who have received land use waivers under Measure 37 are entitled to complete developments under the provisions of Measure 37 if they have established vested rights to do so.

To streamline the approval process for small claims, this measure provides that those who choose to apply for up to three homes need only show they had the right to build the homes they are requesting when they acquired their property.

To validate larger claims, this measure requires those who choose to apply for four to 10 homes to show they had the right to develop the homes they are requesting when they acquired their property and that they have suffered a loss of value from prior regulations that justifies the number of homes requested. Appraisals are required to establish such reductions in value. The costs of appraisals and other costs of preparing claims may be added to the calculation of reduced values, up to \$5,000 per claim.

This measure establishes an ombudsman to help landowners who request assistance with their claims.

This measure modifies Measure 37 for compensation claims that arise from land use regulations in the future. It authorizes such claims based on regulations that limit residential uses of property or farm and forest practices, requires documentation of reduced values and provides for proportionate compensation when such reductions in value occur. Property owners will have five years to file claims over regulations enacted after January 1, 2007.

This measure will be effective 30 days after approval by the voters.

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(2) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for Senate Joint Resolution 4 (2007) shall be:

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This measure would amend the Oregon Constitution to provide dedicated funding for children's health care and other health programs through an increase in the tobacco tax. The measure would raise the cigarette tax by 84.5 cents per pack to equalize it with the cigarette tax in the State of Washington. The measure would also raise the tax on cigars and other tobacco products.

The new revenue generated by this measure would be dedicated to the following purposes:

1. Providing health care to children.
2. Providing health care to low-income adults.
3. Providing health care to other medically underserved Oregonians.
4. Preventing tobacco use.

If the measure passes, it will be implemented by Senate Bill 3, which the legislature passed earlier this year. That legislation:

1. Creates the Healthy Kids Program, which is designed to provide affordable health care to uninsured children in Oregon. The Healthy Kids Program expands eligibility for existing health insurance programs, streamlines and simplifies application procedures and creates a new children's health care pool to lower health care costs.

2. Provides affordable health care for 10,000 low-income adults through the Oregon Health Plan.

3. Expands funding for rural health care and safety net clinics.
4. Expands funding of Oregon's Tobacco Use Reduction Account.

Under Senate Bill 3, approximately 70 percent of the new tobacco tax revenue through 2011 would be allocated to the Healthy Kids Program; approximately 18 percent would be allocated to health care for low-income adults; approximately 4 percent would be allocated to rural health services and safety net clinics; and approximately 8 percent would be allocated to tobacco prevention.

If this measure fails, the Healthy Kids Program and other health care expansions in Senate Bill 3 will not become law.

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(3) ORS 251.235 does not apply to the explanatory statements contained in subsections (1) and (2) of this section. The explanatory statements contained in subsections (1) and (2) of this section shall be printed in the voters' pamphlet.

**SECTION 6.** (1) Arguments relating to the measures referred to in section 1 of this 2007 Act may be filed with the Secretary of State under ORS 251.245 and 251.255, except that an argument must be filed not later than the date set by the Secretary of State by rule.

(2) Notwithstanding ORS 192.410 to 192.505 relating to public records, an argument filed under this section is exempt from public inspection until the fourth business day after the deadline for filing the argument.

**SECTION 7.** (1) The Secretary of State shall cause to be printed in the voters' pamphlet the number, ballot title and text of the measures referred to in section 1 of this 2007 Act and the financial estimates, explanatory statements and arguments relating to the measures. The Secretary of State shall also cause to be printed in the voters' pamphlet any other material required by law. Notwithstanding ORS 251.026, the Secretary of State shall include in the voters' pamphlet the information or statements described in ORS 251.026 that the Secretary of State considers applicable to the election on the measures referred to in section 1 of this 2007 Act.

(2) Not later than the 10th day before the election, the Secretary of State shall cause the voters' pamphlet to be mailed to each post-office mailing address in Oregon and may use any additional means of distribution necessary to make the pamphlet available to electors.

(3) In preparing the voters' pamphlet under this section, the Secretary of State is not required to comply with ORS chapter 279B relating to competitive bidding.

(4) For purposes of sections 1 to 9 of this 2007 Act, the election referred to in ORS 251.295 is the special election held on the date specified in section 2 of this 2007 Act.

**SECTION 8.** (1) Notwithstanding the deadline in ORS 254.085, the Secretary of State shall prepare and deliver to each county clerk by the most expeditious means practicable a certified statement of the measures referred to in section 1 of this 2007 Act. The Secretary of State shall include with the statement the number, financial estimate and full ballot title of the measures, and any other information required by law. The Secretary of State shall keep a copy of the statement.

(2) The county clerks shall print on the ballot the number, financial estimate and full ballot title of the measures, along with any other material required by law. In lieu of printing the financial estimate, the summary portion of the ballot title or other material required by law on the ballot, a county clerk may include with the ballot the complete text of the ballot title, the financial estimate and any other material required by law.

**SECTION 9.** (1) The Secretary of State may adopt rules governing the procedures for conducting the election on the measures referred to in section 1 of this 2007 Act as may be necessary to implement sections 1 to 9 of this 2007 Act.

(2) Notwithstanding ORS 254.465, the election on the measures referred to in section 1 of this 2007 Act shall be conducted by mail in all counties in this state as provided under ORS 254.470.

**FORFEITURE--SENATE JOINT RESOLUTION 18**

**SECTION 10.** (1) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for Senate Joint Resolution 18 (2007) shall be:

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**AMENDS CONSTITUTION: MODIFIES PROVISIONS GOVERNING CIVIL FORFEITURES RELATED TO CRIMES; PERMITS USE OF PROCEEDS BY LAW ENFORCEMENT.**

**RESULT OF "YES" VOTE:** "Yes" vote amends constitution to allow civil forfeitures for crimes similar to crime of conviction, permits proceeds to be used for law enforcement; other changes.

**RESULT OF "NO" VOTE:** "No" vote retains constitutional provisions prohibiting civil forfeitures unless property is directly related to crime of conviction and prohibiting use of proceeds by law enforcement.

**SUMMARY:** Oregon's Constitution generally requires that property may be forfeited only if the owner is convicted of crime involving the property. Constitution currently prohibits use of proceeds for law enforcement purposes. Measure would allow civil forfeiture of property for crimes that are substantially similar to crime of conviction. Measure would permit forfeiture without conviction if the person took property with intent to defeat forfeiture, knew or should have known that the property constituted proceeds or instrumentality of criminal conduct, or acquiesced in criminal conduct. The measure requires proof by preponderance of evidence to forfeit personal property, and by clear and convincing evidence to forfeit real property. The measure provides an exemption for forfeiture of animals. The measure would allow using forfeiture proceeds for law enforcement purposes.

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(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be the ballot title printed in the voters' pamphlet and printed on, or included with, the ballot.

(3) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for Senate Joint Resolution 18 (2007) shall be:

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In November 2000 voters amended the Oregon Constitution by approving the Oregon Property Protection Act of 2000. The amendment imposed several restrictions on the ability of state and local governments to civilly forfeit property. This measure would modify some of the restrictions on civil forfeiture of property.

The constitution currently requires that a person's property may be forfeited only if the person is convicted of a crime. In addition, the forfeiting agency must show by clear and convincing evidence that the property was an instrumentality of that crime, or proceeds of that crime.

This measure would allow civil forfeiture of instrumentalities and proceeds of other crimes that are similar to the crime that a person is convicted of committing, even though the person is not convicted of committing those other crimes. The measure requires notice to the person and opportunity to challenge the seizure and forfeiture.

This measure would also specify circumstances in which property may be forfeited without a criminal conviction. The measure would allow forfeiture if the person took the

property with intent to defeat forfeiture, the person knew or should have known that the property constituted proceeds or instrumentality of criminal conduct, or the person acquiesced in the criminal conduct.

This measure also modifies the standard of proof in civil forfeiture proceedings, requiring proof by preponderance of evidence to forfeit personal property, and proof by clear and convincing evidence to forfeit real property. The measure makes an exception for cash, weapons or negotiable instruments found in close proximity to controlled substances or instrumentalities of criminal conduct, providing that claimant must prove by preponderance of evidence that the property is not subject to forfeiture.

This measure provides that forfeiture of animals is not subject to the Oregon Property Protection Act of 2000.

This measure removes the prohibition on using forfeited property for law enforcement purposes, and removes the cap on the amount of property that may be applied against the costs of the forfeiture proceeding.

This measure makes various other housekeeping amendments to the Oregon Property Protection Act of 2000.

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(4) ORS 251.235 does not apply to the explanatory statement contained in subsection (3) of this section. The explanatory statement contained in subsection (3) of this section shall be printed in the voters' pamphlet.

(5) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for Senate Joint Resolution 18 (2007) to be printed in the voters' pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** The direct financial impact of this measure to state and local governments is indeterminate due to the inability to accurately predict the number of civil forfeitures that may occur. If the frequency of civil forfeitures increases, then the amount of money going to the state and local jurisdictions will increase correspondingly. Any assets forfeited under this measure are distributed as follows: to the satisfaction of any foreclosed liens, security interests and contracts in the order of their priority; to the state or any of its political subdivisions for actual and reasonable expenses; and to the state or any of its political subdivisions for drug treatment programs. This measure will increase the revenue to the state and its political subdivisions, but the extent of the increase is unknown.

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(6) ORS 250.131 does not apply to the financial estimate contained in subsection (5) of this section. The financial estimate contained in subsection (5) of this section shall be the financial estimate printed in the voters' pamphlet and printed on, or included with, the ballot.

#### **SCHOOL ELECTIONS--HOUSE JOINT RESOLUTION 4**

**SECTION 11.** (1) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for House Joint Resolution 4 (2007) shall be:

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**AMENDS CONSTITUTION: STANDARDIZES VOTING ELIGIBILITY FOR SCHOOL BOARD ELECTIONS WITH OTHER STATE AND LOCAL ELECTIONS.**

**RESULT OF “YES” VOTE: “Yes” vote deletes unenforceable provisions relating to voter eligibility; deletion would have no substantive effect.**

**RESULT OF “NO” VOTE: “No” vote retains unenforceable provisions that require citizens to be 21 years of age to vote in school board elections.**

**SUMMARY: Amends Oregon Constitution. The Oregon Constitution requires voters in school district elections to be 21 years of age and residents in the school district for six months. It also requires voters to pass a literacy test to vote in school district elections. This measure would eliminate these school district voter eligibility requirements because they are unenforceable under the United States Constitution and federal law. Voters in school district elections would still have to satisfy all other voter eligibility requirements for local, state and federal elections in Oregon. This measure would “clean up” the Oregon Constitution by deleting outdated and unenforceable language.**

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**(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be the ballot title printed in the voters’ pamphlet and printed on, or included with, the ballot.**

**(3) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters’ pamphlet for House Joint Resolution 4 (2007) shall be:**

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In 1948, by initiative, voters amended the Oregon Constitution to require that in order to vote in school elections citizens must meet certain qualifications. These qualifications are set forth in section 6, Article VIII of the Oregon Constitution, and include requirements that a citizen be at least 21 years old, have resided in the school district for at least six months before the election and have registered for the election. A citizen meeting these qualifications would be allowed to vote in the school election if the citizen also could read and write English.

Later developments in voting rights laws and in court decisions interpreting the United States Constitution have made each of these requirements unconstitutional or a violation of federal law. The 26th Amendment to the United States Constitution prevents denial or abridgment of the voting rights of a citizen 18 years of age or older. Federal court decisions have held that residency requirements of the type set forth in section 6, Article VIII of the Oregon Constitution, violate the Equal Protection Clause of the 14th Amendment to the United States Constitution, and Oregon’s Attorney General in 1972 held that the requirement is unenforceable. Finally, the federal Voting Rights Act of 1965 generally prohibits literacy tests as a condition for eligibility to vote.

This measure repeals section 6, Article VIII of the Oregon Constitution, so that Oregon’s requirements for voting in school elections do not violate federal law and the United States Constitution. The measure also amends section 2, Article II of the Oregon Constitution, in order to remove a reference to the same section 6, Article VIII, repealed in the measure.

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**(4) ORS 251.235 does not apply to the explanatory statement contained in subsection (3) of this section. The explanatory statement contained in subsection (3) of this section shall be printed in the voters’ pamphlet.**

**(5) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Joint Resolution 4 (2007) to be printed in the voters’ pamphlet and printed on, or included with, the ballot shall be:**

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**ESTIMATE OF FINANCIAL IMPACT:** There is no direct financial effect on state or local government expenditures or revenue.

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(6) ORS 250.131 does not apply to the financial estimate contained in subsection (5) of this section. The financial estimate contained in subsection (5) of this section shall be the financial estimate printed in the voters' pamphlet and printed on, or included with, the ballot.

**DOUBLE MAJORITY--HOUSE JOINT RESOLUTION 15**

**SECTION 12.** (1) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for House Joint Resolution 15 (2007) shall be:

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**AMENDS CONSTITUTION: PROVIDES THAT MAY AND NOVEMBER PROPERTY TAX ELECTIONS ARE DECIDED BY MAJORITY OF VOTERS VOTING.**

**RESULT OF "YES" VOTE:** "Yes" vote provides that majority of voters voting in May and November elections may pass local property tax measure to fund schools, police, local services.

**RESULT OF "NO" VOTE:** "No" vote retains current law where non-votes have effect of "no" vote in certain local elections where less than 50 percent of voters participate.

**SUMMARY:** Current law requires that 50 percent of voters participate in an election (except general elections in even-numbered years) in order to pass local property tax measures to raise money for schools, police, libraries, parks or other local government services. This means that non-votes have the effect of a "no" vote where less than 50 percent of qualified voters participate. All other elections are determined by a majority of those who vote, with no voter turnout requirements. This measure eliminates the voter turnout requirement for local property tax elections held in May and November. As a result, for such elections, measures to raise money for schools, police, libraries, parks or other local government services become law when approved by a majority of those voting.

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(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be the ballot title printed in the voters' pamphlet and printed on, or included with, the ballot.

(3) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for House Joint Resolution 15 (2007) shall be:

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Under current law, local governments may ask voters to approve certain local property tax measures to raise money to help fund local government services, such as education, jails, police and fire, libraries and parks. Local governments may also ask voters to approve serial or bond levies to pay for capital projects, such as building new schools, roads, libraries, parks and other public facilities.

Currently, the Oregon Constitution requires that at least 50 percent of qualified voters must vote, and a majority of those voters must approve the measure, in order to pass a local

property tax measure. The only exception to the 50 percent turnout requirement is for November elections held in even-numbered years.

Under the 50 percent voter turnout requirement, often referred to as a “double majority” requirement, non-votes have the effect of a “no” vote if less than 50 percent of qualified voters participate in the election. An example demonstrates how current law works. Assume:

Number of qualified voters in jurisdiction: 1,000,000

Voters who voted: 499,999

“Yes” vote: 499,999 (100% of those who voted)

“No” vote: 0

Voters who did not vote: 500,001

Result: Measure fails; non-votes have effect of “no” vote

The voter turnout requirement only applies to certain local property tax measures, such as “local option” taxes, serial levies and bond levies. All other local and state ballot measures are passed if approved by a majority of those who vote, with no voter turnout requirement.

As a result of the voter turnout requirement, many local property tax measures that were approved in past elections by a majority of those voting nonetheless failed, because the voter turnout requirement was not met.

This measure eliminates the voter turnout requirements for property tax elections held in May and November, but keeps the voter turnout requirement for elections held at any other time. As a result, for May and November elections, local property tax measures become law when approved by a majority of those voting.

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(4) ORS 251.235 does not apply to the explanatory statement contained in subsection (3) of this section. The explanatory statement contained in subsection (3) of this section shall be printed in the voters’ pamphlet.

(5) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Joint Resolution 15 (2007) to be printed in the voters’ pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** There is no direct financial effect on state or local government expenditures or revenue.

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(6) ORS 250.131 does not apply to the financial estimate contained in subsection (5) of this section. The financial estimate contained in subsection (5) of this section shall be the financial estimate printed in the voters’ pamphlet and printed on, or included with, the ballot.

### **REDISTRICTING--HOUSE JOINT RESOLUTION 31**

**SECTION 13.** (1) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for House Joint Resolution 31 (2007) shall be:

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**AMENDS CONSTITUTION: CHANGES OPERATIVE DATE OF REDISTRICTING PLANS; ALLOWS AFFECTED LEGISLATORS TO FINISH TERM IN ORIGINAL DISTRICT.**

**RESULT OF "YES" VOTE:** "Yes" vote changes date when new redistricting plans become law, which allows affected state Representatives and Senators to represent their districts for a full term.

**RESULT OF "NO" VOTE:** "No" vote retains current law permitting state legislator to be reassigned to another district when redistricting plan results in multiple legislators living in one district.

**SUMMARY:** Amends Oregon Constitution. Reapportionment, commonly called "redistricting" in Oregon, changes the lines of Oregon's state Representative and state Senator districts every 10 years, based on results of the U.S. census. The next census is scheduled for 2010, with redistricting to be done in 2011. Currently, when a redistricting plan takes effect, and more than one Representative or Senator resides in the new district, one of the Representatives or Senators is assigned, temporarily, to another district. For example, in 2001 a Eugene Representative was assigned to represent a district in central Oregon. This measure would allow Representatives and Senators to continue to represent the districts from which they were elected for their full terms, with the new redistricting going into effect after the next general election.

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(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be the ballot title printed in the voters' pamphlet and printed on, or included with, the ballot.

(3) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for House Joint Resolution 31 (2007) shall be:

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The Oregon Constitution requires the adjustment of the legislative district boundaries for the offices of state Senator and state Representative every 10 years after the United States census is taken. This process is known as redistricting or reapportionment.

This measure amends the Oregon Constitution to change the date that the redistricting plan first applies, or becomes operative.

Currently, the constitution requires the Legislative Assembly to adopt a redistricting plan by July 1 of the year following the census (an odd-numbered year). If the legislature does not adopt a plan, the Secretary of State must file a redistricting plan with the Oregon Supreme Court by August 15 of the same year. The constitution allows for legal challenges to any redistricting plan and requires that a plan be operative no later than December 15 of the same year.

Since the redistricting plan goes into operation during legislative terms of office, this means that incumbent members of the legislature must be assigned to represent the new legislative districts for the remainder of their terms. State Representatives may represent an assigned district for more than one year. State Senators may represent an assigned district for more than two years.

This measure changes the date that the new redistricting plan becomes operative to the first day of the next regular legislative session that occurs after the plan is developed. Therefore, most members of the legislature could continue to represent the districts from which they were elected or appointed until the end of their terms. Some state Senators would have to be assigned to a new district for the final two years of their term of office.

However, the measure also provides that the new legislative districts would apply for purposes of nominating and electing members of the legislature at the primary and general elections in the even-numbered year after the final redistricting plan was developed.

Therefore, this measure allows the new legislative districts to apply for purposes of nominating and electing candidates from the new legislative districts, but does not require most incumbent members of the legislature to be assigned to and represent new legislative districts that are different from the districts from which they were elected or appointed.

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(4) ORS 251.235 does not apply to the explanatory statement contained in subsection (3) of this section. The explanatory statement contained in subsection (3) of this section shall be printed in the voters' pamphlet.

(5) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Joint Resolution 31 (2007) to be printed in the voters' pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** There is no direct financial effect on state or local government expenditures or revenue.

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(6) ORS 250.131 does not apply to the financial estimate contained in subsection (5) of this section. The financial estimate contained in subsection (5) of this section shall be the financial estimate printed in the voters' pamphlet and printed on, or included with, the ballot.

#### **CRIME VICTIMS--HOUSE JOINT RESOLUTION 49**

**SECTION 14.** (1) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for House Joint Resolution 49 (2007) shall be:

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**AMENDS CONSTITUTION: ENABLES CRIME VICTIMS TO ENFORCE EXISTING CONSTITUTIONAL RIGHTS IN PROSECUTIONS, DELINQUENCY PROCEEDINGS; AUTHORIZES IMPLEMENTING LEGISLATION.**

**RESULT OF "YES" VOTE:** "Yes" vote provides crime victims effective court processes to enforce existing constitutional rights regarding participation, restitution in criminal prosecutions/juvenile delinquency proceedings; authorizes implementing legislation.

**RESULT OF "NO" VOTE:** "No" vote retains provisions giving crime victims specified constitutional rights in prosecutions/juvenile delinquency proceedings, but denying victims effective court processes to enforce these rights.

**SUMMARY:** Amends Oregon Constitution. Current constitution gives crime victims specified rights in criminal prosecutions/juvenile delinquency proceedings (including rights to: be present during specified proceedings, refuse defendants' discovery requests, receive restitution, obtain transcripts, consult about specified plea negotiations), but constitution denies victims effective processes for enforcing these rights in court. Measure provides victims shall have remedy by due course of law for violations of these constitutional rights. Measure provides victims may assert claim based on these rights in pending cases or, absent pending case, by mandamus. Authorizes legislature to enact implementing legislation. Measure does not allow victims to obtain compensation, invalidate an accusatory instrument, conviction or adjudication, terminate a criminal or juvenile delinquency proceeding, or sus-

pend such proceeding if suspension would violate defendant's constitutional rights. Other provisions.

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(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be the ballot title printed in the voters' pamphlet and printed on, or included with, the ballot.

(3) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for House Joint Resolution 49 (2007) shall be:

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Section 42 of Article I (the Bill of Rights) of the Oregon Constitution establishes rights of crime victims in adult criminal and juvenile delinquency cases. Those rights include, among others, the right to be present and to be heard at critical stages in the case, to obtain information about the defendant or alleged juvenile offender, to refuse to be interviewed by the defendant or alleged juvenile offender, to obtain a transcript of certain court cases and, upon request, to be consulted about plea negotiations in certain cases.

Currently, victims cannot enforce effectively any of the rights established in section 42 because section 42 provides that assertion of a victim's rights cannot invalidate a court ruling or suspend a case. Thus, victims cannot appeal from or otherwise challenge a ruling of a court denying any of their section 42 rights, and the constitution prevents the legislature from providing victims effective procedural rights by statute.

HJR 49 amends section 42 of Oregon's Bill of Rights. Under the measure, victims could individually seek remedies for violations of section 42 "by due course of law." Victims of crime could challenge a ruling of a court denying the victim a right secured for the victim by section 42. To effectuate their rights under section 42, the measure allows victims to seek a delay in an adult criminal or juvenile delinquency case. Victims could pursue remedies in the criminal or juvenile delinquency case if one is pending or, if no such case is pending, could initiate a case of their own. If the victim and the district attorney agreed, the district attorney could enforce the victim's section 42 rights. The measure authorizes the legislature to enact statutes providing the details of victims' remedial processes, including reasonable limitations on the time allowed for filing claims and the circumstances in which appeals are allowed.

In prosecutions involving organized crime, some victims may also be coconspirators. In other cases, children who are victims of crime may be subject to manipulation by the accused. The measure provides that in either type of case prosecutors may seek a court order suspending the rights secured by section 42.

The measure continues the current provision of section 42 that prevents a recovery of money damages for violation of a victim's rights, and the current provision that prevents an assertion of a victim's rights from invalidating an accusatory instrument, conviction or adjudication, or from terminating any criminal or juvenile delinquency case at any point after the case begins. The measure also provides that no claim for a right established in section 42 shall suspend a criminal or juvenile delinquency case if suspension would violate a right of a defendant or alleged youth offender guaranteed by the Oregon Constitution or United States Constitution.

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(4) ORS 251.235 does not apply to the explanatory statement contained in subsection (3) of this section. The explanatory statement contained in subsection (3) of this section shall be printed in the voters' pamphlet.

(5) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Joint Resolution 49 (2007) to be printed in the voters' pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** The direct financial impact to state and local governments is indeterminate because the impact depends on how often a victim would choose to bring an enforcement action to protect rights guaranteed under section 42, Article I of the Oregon Constitution, but denied by the court, district attorney or other public agency. These additional challenges could arise before a criminal case is filed, after a case is filed, and after the entry of a final judgment in a criminal case. Actions could be pursued in cases involving person and property crimes in violation, misdemeanor and felony cases, and the victim could file an enforcement action more than one time in a single case. Some cases involve multiple victims, each of whom could bring an individual enforcement action. The measure authorizes the legislature to enact laws providing detailed procedures for claims by victims, including the establishment of reasonable limitations on the time allowed victims to assert their rights and prescribing procedures for appeal. Legislation providing such procedures and limitations could change the direct costs of this measure. Direct costs may also be impacted by the degree of change in the current practice of restitution orders and payment, how many new victims are identified by the court, and the number of challenges that are appealed to a higher court.

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(6) ORS 250.131 does not apply to the financial estimate contained in subsection (5) of this section. The financial estimate contained in subsection (5) of this section shall be the financial estimate printed in the voters' pamphlet and printed on, or included with, the ballot.

#### **CRIME VICTIMS--HOUSE JOINT RESOLUTION 50**

**SECTION 15.** (1) Notwithstanding ORS 250.035, 250.067, 250.075 (2) and 254.085 (3), the ballot title for House Joint Resolution 50 (2007) shall be:

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**AMENDS CONSTITUTION: ENABLES CRIME VICTIMS TO ENFORCE EXISTING CONSTITUTIONAL RIGHTS IN PROSECUTIONS, DELINQUENCY PROCEEDINGS; AUTHORIZES IMPLEMENTING LEGISLATION.**

**RESULT OF "YES" VOTE:** "Yes" vote provides crime victims court processes to enforce existing constitutional rights regarding protection from offenders throughout criminal prosecutions/juvenile delinquency proceedings; authorizes implementing legislation.

**RESULT OF "NO" VOTE:** "No" vote retains provisions giving crime victims specified constitutional rights in prosecutions/juvenile delinquency proceedings, but denying crime victims effective court processes to enforce these rights.

**SUMMARY:** Amends Oregon Constitution. Current constitution gives crime victims specified rights in criminal prosecutions/juvenile delinquency proceedings (including rights to: protection from offenders, have pre-trial release decisions based on principles of protection, have release prohibited under specified circumstances), but constitution denies crime victims processes for enforcing these rights in court. Measure provides victims shall have remedy by due course of law for violations of these constitutional rights. Measure provides victims

may assert claim based on these rights in pending cases or, absent pending case, by mandamus. Authorizes legislature to enact implementing legislation. Measure does not allow victims to obtain compensation, invalidate an accusatory instrument, conviction or adjudication, terminate a criminal or juvenile delinquency proceeding, or suspend such proceeding if suspension would violate defendant's constitutional rights. Other provisions.

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(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be the ballot title printed in the voters' pamphlet and printed on, or included with, the ballot.

(3) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for House Joint Resolution 50 (2007) shall be:

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Section 43 of Article I of the Oregon Constitution (the Bill of Rights) establishes rights of crime victims in adult criminal and juvenile delinquency cases. Section 43 establishes the right to be reasonably protected from the accused throughout the adult criminal and juvenile delinquency process and the right to have decisions by the court about the pretrial release of the accused based upon the principles of reasonable protection of the victim and the public, and the likelihood that the accused will appear for trial.

Currently, victims cannot enforce effectively any of the rights established in section 43 because section 43 provides that assertion of a victim's rights cannot invalidate a court ruling or suspend a case and because district attorneys are the only parties to a case that have authority to assert the victim's section 43 rights. Thus, victims cannot appear in court to assert their section 43 rights and cannot appeal from or otherwise challenge a ruling of a court denying any of their section 43 rights. The constitution prevents the legislature from providing victims such procedural rights by statute.

HJR 50 amends section 43 of Oregon's Bill of Rights. Under the measure, victims could individually seek remedies for violations of section 43 "by due course of law." Victims of crime could challenge a ruling of a court denying the victim a right secured for the victim by section 43. To effectuate their rights under section 43, the measure allows victims to seek a delay in an adult criminal or juvenile delinquency case. Victims could pursue remedies in the criminal or juvenile delinquency case if one is pending, or, if no such case is pending, could initiate a case of their own. If the victim and the district attorney agreed, the district attorney could enforce the victim's section 43 rights. The measure authorizes the legislature to enact statutes providing the details of victims' remedial processes, including reasonable limitations on the time allowed for filing claims and the circumstances in which appeals are allowed.

The measure continues the current provision of section 43 that prevents a recovery of money damages for violation of a victim's rights, and the current provision that prevents an assertion of a victim's rights from invalidating an accusatory instrument, conviction or adjudication, or from terminating any criminal or juvenile delinquency case at any point after the case begins. The measure also provides that no claim for a right established in section 43 shall suspend a criminal or juvenile delinquency case if suspension would violate a right of a defendant or alleged youth offender guaranteed by the Oregon Constitution or United States Constitution.

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(4) ORS 251.235 does not apply to the explanatory statement contained in subsection (3) of this section. The explanatory statement contained in subsection (3) of this section shall be printed in the voters' pamphlet.

(5) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Joint Resolution 50 (2007) to be printed in the voters' pamphlet and printed on, or included with, the ballot shall be:

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**ESTIMATE OF FINANCIAL IMPACT:** The direct financial impact to state and local governments is indeterminate because of the uncertainty of how many victims choose to bring an enforcement action to protect rights guaranteed under section 43, Article I of the Oregon Constitution, but denied by the court, district attorney or other public agency. The cost of this measure could increase the number of pretrial release hearings and increase the number of criminal defendants held and the length of incarceration before, during or after trials. Current provisions of the constitution establish a victim's right to be reasonably protected from the defendant during the criminal justice process, including pretrial detention of a criminal defendant. Current constitutional provisions require that there shall be no bail for a defendant accused of a violent felony where the defendant is a danger to the victim or others. Few of these criminal defendants awaiting trial are currently released, so the number of cases affected by this measure may be minimal. The measure authorizes the legislature to enact laws providing detailed procedures for claims by victims, including the establishment of reasonable limitations on the time allowed victims to assert their rights and prescribing procedures for appeal. Legislation providing such procedures and limitations could change the direct costs of this measure.

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(6) ORS 250.131 does not apply to the financial estimate contained in subsection (5) of this section. The financial estimate contained in subsection (5) of this section shall be the financial estimate printed in the voters' pamphlet and printed on, or included with, the ballot.

#### **CAPTIONS**

**SECTION 16.** The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.

#### **EMERGENCY CLAUSE**

**SECTION 17.** This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

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**Passed by House May 7, 2007**

**Repassed by House June 25, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 24, 2007**

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President of Senate

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State