

Minority Report
B-Engrossed
House Bill 3634

Ordered by the Senate February 22
Including House Amendments dated February 20 and Senate Minority
Report Amendments dated February 22

Sponsored by nonconcurring members of the Senate Committee on Rules and Executive Appointments: Senators
ATKINSON, FERRIOLI

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.

Directs Secretary of State to number measures to be voted on by state at large in certain order.

Directs Attorney General to prepare ballot title for measure referred to people by Legislative Assembly.

Prohibits tampering with ballot or with ballot return identification or secrecy envelope with intent to alter outcome of election. Punishes violation by maximum of five years' imprisonment, \$125,000 fine, or both.

Prohibits county clerk from opening ballot return identification or secrecy envelope before 8 p.m. on day of election.

Requires county clerk to count number of printed ballots and mark unused ballots as void. Prohibits Secretary of State, county clerk or city elections officer from taking certain actions if total number of ballots delivered to electors and unused ballots marked void does not match total number of ballots printed.

Directs county clerk to count number of ballots and number of ballot return identification and secrecy envelopes received. Prohibits Secretary of State, county clerk or city elections officer from taking certain actions if number of ballots cast in precinct exceeds number of electors registered to vote in precinct or if numbers of ballots, ballot return identification envelopes and secrecy envelopes are not identical.

Directs county clerk to monitor and secure containers for deposit of ballots at each ballot drop site designated by clerk. Requires county clerk to remove ballots deposited at drop site at least once each calendar day.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to elections; creating new provisions; amending ORS 250.075, 250.085, 250.115, 254.478,
3 254.483 and 260.993; and declaring an emergency.

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

5 **SECTION 1.** ORS 250.115 is amended to read:

6 250.115. (1) The Secretary of State shall number the measures to be voted on in the state at
7 large consecutively and shall not repeat any number in any subsequent election. For each election,
8 the numbers assigned shall begin with the number after the last number assigned under this section
9 at the previous election. [*The measures shall be assigned numbers in the order in which the measures*
10 *are filed with the secretary.*] **The Secretary of State shall number initiative or referendum**
11 **measures in the order that the petitions are filed for signature verification with the Secre-**
12 **tary of State, followed immediately in number by Acts of the Legislative Assembly submitted**
13 **to the people for approval or rejection in the order that the Acts are filed with the Secretary**
14 **of State, followed immediately in number by amendments to the Oregon Constitution re-**

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 **ferred to the people by the Legislative Assembly in the order that the amendments are filed**
2 **with the Secretary of State.**

3 (2) The Secretary of State shall number state measures not referred to under subsection (1) of
4 this section consecutively, beginning with the number after the last number assigned under sub-
5 section (1) of this section, in the order in which the measures are filed with the secretary.

6 **SECTION 2.** ORS 250.075 is amended to read:

7 250.075. [(1)] When the Legislative Assembly refers a measure to the people, a ballot title for the
8 measure [*may be prepared by the assembly. The ballot title shall be filed with the Secretary of State*
9 *when the measure is filed with the Secretary of State.*] **shall be prepared by the Attorney General.**

10 [(2) *If the title is not prepared under subsection (1) of this section,*] When the measure is filed with
11 the Secretary of State, the secretary shall send two copies of the referred measure to the Attorney
12 General. Not later than the 30th day after the Legislative Assembly adjourns, the Attorney General
13 shall provide a draft ballot title for the measure. The Attorney General shall send a copy of the
14 draft ballot title to each member of the Legislative Assembly, and file with the Secretary of State
15 a copy of the referred measure and the draft ballot title and a certificate of mailing of the draft
16 ballot title to each member.

17 **SECTION 3.** ORS 250.085 is amended to read:

18 250.085. (1) Any elector dissatisfied with a ballot title [*prepared by the Legislative Assembly*]
19 **certified by the Attorney General** for a measure referred to the people by the **Legislative As-**
20 **sembly** and [*filed with the Secretary of State*] **who timely submitted written comments on the**
21 **draft ballot title** may petition the Supreme Court seeking a different title. The petition shall state
22 the reasons that the title filed with the Secretary of State does not substantially comply with the
23 requirements of ORS 250.035.

24 (2) Any elector dissatisfied with the latest ballot title for an initiated or referred measure cer-
25 tified by the Attorney General and who timely submitted written comments on the draft ballot title
26 may petition the Supreme Court seeking a different title. The petition shall state the reasons that
27 the title filed with the Secretary of State does not substantially comply with the requirements of
28 ORS 250.035.

29 (3) The petition shall name the Attorney General as the respondent and must be filed[:]

30 [(a)] not later than the 10th business day after the Attorney General certifies a ballot title or
31 a corrected ballot title to the Secretary of State, whichever is later.[: or]

32 [(b) *If the title is provided by the Legislative Assembly under ORS 250.075, not later than the 10th*
33 *business day after the Legislative Assembly files the ballot title with the Secretary of State.*]

34 (4) An elector filing a petition under this section shall notify the Secretary of State in writing
35 that the petition has been filed. The notice must be received in the office of the Secretary of State
36 not later than 5 p.m. on the next business day following the day the petition is filed.

37 (5) The Supreme Court shall review the title for substantial compliance with the requirements
38 of ORS 250.035.

39 (6) When reviewing a title certified by the Attorney General, the Supreme Court shall not con-
40 sider arguments concerning the ballot title not presented in writing to the Secretary of State unless
41 the court determines that the argument concerns language added to or removed from the draft title
42 after expiration of the comment period provided in ORS 250.067.

43 (7) The review by the Supreme Court shall be conducted expeditiously to ensure the orderly and
44 timely circulation of the petition or conduct of the election at which the measure is to be submitted
45 to the electors.

1 (8) If the Supreme Court determines that the latest ballot title certified by the Attorney General
2 [or prepared by the Legislative Assembly] substantially complies with the requirements of ORS
3 250.035, the court shall certify the title to the Secretary of State. If the Supreme Court determines
4 that the latest ballot title certified by the Attorney General [or prepared by the Legislative
5 Assembly] does not substantially comply with the requirements of ORS 250.035, the court shall
6 modify the ballot title and certify the ballot title to the Secretary of State or refer the ballot title
7 to the Attorney General for modification.

8 (9) Not later than five business days after the Supreme Court refers a ballot title to the Attor-
9 ney General under this section, the Attorney General shall file a modified ballot title with the Su-
10 preme Court and serve copies of the modified ballot title on all parties to the ballot title review
11 proceeding. If no party to the ballot title review proceeding files an objection to the modified ballot
12 title within five business days after the date the modified ballot title is filed, the Supreme Court
13 shall certify the modified ballot title to the Secretary of State and enter an appellate judgment the
14 next judicial day. If any of the parties to the ballot title review proceeding timely files a petition
15 objecting to the modified ballot title, the Supreme Court shall review the modified ballot title to
16 determine whether the modified ballot title substantially complies with the requirements of ORS
17 250.035.

18 (10) Upon the filing of a petition under subsection (9) of this section objecting to a modified
19 ballot title:

20 (a) If the Supreme Court determines that the modified ballot title substantially complies with the
21 requirements of ORS 250.035, the court shall certify the modified ballot title to the Secretary of
22 State; or

23 (b) If the Supreme Court determines that the modified ballot title does not substantially comply
24 with the requirements of ORS 250.035, the court shall modify the ballot title and certify the ballot
25 title to the Secretary of State or refer the modified ballot title to the Attorney General for addi-
26 tional modification and further proceedings under subsection (9) of this section.

27 **SECTION 4. Section 5 of this 2008 Act is added to and made a part of ORS chapter 260.**

28 **SECTION 5. (1) A person may not, with the intent to alter the outcome of an election:**

29 **(a) Misrepresent or falsify information on a ballot;**

30 **(b) Destroy, discard or tamper with a ballot return identification envelope or secrecy
31 envelope prior to the certification of the election results;**

32 **(c) Handle or submit the ballot of another elector; or**

33 **(d) Tamper with, commit the theft of or fail to deliver any ballots from a ballot drop site
34 designated under ORS 254.470 or a location described in ORS 254.472 or 254.474.**

35 **(2) Subsection (1)(c) of this section does not apply to:**

36 **(a) State or county elections officials, acting in the course of official business;**

37 **(b) An employee of the United States Postal Service, acting in the course of official
38 business;**

39 **(c) A member of the immediate family of the elector who voted the ballot; or**

40 **(d) Any person who has the written consent of the elector who voted the ballot to handle
41 the ballot.**

42 **(3) As used in this section:**

43 **(a) "Ballot" has the meaning given that term in ORS 246.012.**

44 **(b) "Immediate family" means the father, mother, child, sibling, spouse, grandparent,
45 stepparent or stepchild of the elector.**

1 **SECTION 6.** ORS 260.993 is amended to read:

2 260.993. (1) The penalty for violation of ORS 260.532 is limited to that provided in ORS 260.532
3 (6) and (8).

4 (2) Violation of ORS 247.125, 247.171 (5), 247.420 (2), 253.710, 260.402, 260.555, 260.558, 260.575,
5 260.645 or 260.665 (2) or (3) involving any action described in ORS 260.665 (2)(d) to (f) or 260.715
6 **or section 5 of this 2008 Act** is a Class C felony.

7 (3) Violation of ORS 260.695 (4) is a Class A misdemeanor.

8 (4) Violation of ORS 247.171 (6) is a Class C misdemeanor.

9 **SECTION 7.** ORS 254.478 is amended to read:

10 254.478. [*Not sooner than the seventh day before the date of an election, in preparation for counting*
11 *ballots delivered by mail,*] The county clerk may begin opening return identification and secrecy
12 envelopes of ballots delivered by mail and received by the county clerk **not sooner than 8 p.m.**
13 **on the day of an election.** The county clerk may take any other actions that are necessary to
14 allow the counting of ballots delivered by mail to begin on election day.

15 **SECTION 8.** ORS 254.483 is amended to read:

16 254.483. (1) **The county clerk shall count the number of ballots that are printed for each**
17 **election in the county.**

18 (2) Immediately after 8 p.m. on the day of an election, **each county clerk shall:**

19 [(1) *The county clerk shall destroy all unused absentee and regular ballots in the county clerk's*
20 *possession.*]

21 [(2)] (a) [*Each county shall*] Provide for the security of, and [*shall*] account for **and take pos-**
22 **session of,** unused ballots[.]; **and**

23 **(b) Count the number of unused ballots and mark each unused ballot as void.**

24 (3) **The Secretary of State, a county clerk or a city elections officer may not take any**
25 **action under ORS 254.545, 254.546, 254.555, 254.565 or 255.295 with respect to ballots cast in a**
26 **county if the secretary, clerk or officer determines that the total number of ballots printed**
27 **for an election in the county do not match the total number of ballots delivered to electors**
28 **and unused ballots marked void under this section.**

29 **SECTION 9.** Sections 10 and 11 of this 2008 Act are added to and made a part of ORS
30 chapter 254.

31 **SECTION 10.** (1) **At each election, the county clerk shall count the number of ballots,**
32 **return identification envelopes and secrecy envelopes received by the county clerk.**

33 (2) **The Secretary of State, a county clerk or a city elections officer may not take any**
34 **action under ORS 254.545, 254.546, 254.555, 254.565 or 255.295 with respect to ballots cast in a**
35 **county unless the secretary, clerk or officer determines that:**

36 (a) **The numbers of ballots, return identification envelopes and secrecy envelopes received**
37 **by the county clerk at the election in the county are identical; and**

38 (b) **The number of ballots cast in the precinct do not exceed the number of electors**
39 **registered to vote in the precinct.**

40 **SECTION 11.** (1) **The county clerk shall maintain a list of ballot drop sites designated by**
41 **the clerk under ORS 254.470. The clerk shall monitor each ballot drop site and remove ballots**
42 **deposited at each site at least once each calendar day that the site is open.**

43 (2) **The county clerk shall ensure that containers for the deposit of ballots and ballots**
44 **deposited at the site are secure and that the container for deposit of ballots or ballots de-**
45 **posited at the site may not be removed by any person other than an elections official acting**

1 in the course of official business.

2 **SECTION 12.** The amendments to ORS 250.115 by section 1 of this 2008 Act apply to
3 measures to be voted on at an election held on or after the effective date of this 2008 Act.

4 **SECTION 13.** The amendments to ORS 250.075 and 250.085 by sections 2 and 3 of this 2008
5 Act apply to ballot titles for measures to be voted on at an election held on or after the ef-
6 fective date of this 2008 Act.

7 **SECTION 14.** Section 5 of this 2008 Act and the amendments to ORS 260.993 by section
8 6 of this 2008 Act apply to violations occurring on or after the effective date of this 2008 Act.

9 **SECTION 15.** Sections 10 and 11 of this 2008 Act and the amendments to ORS 254.478 and
10 254.483 by sections 7 and 8 of this 2008 Act apply to elections held on or after the effective
11 date of this 2008 Act.

12 **SECTION 16.** This 2008 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
14 on its passage.

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