

House Bill 3430

Sponsored by Representative THATCHER; Representatives CAMERON, ESQUIVEL, FREEMAN, GARRARD, GILLIAM, GREENLICK, KENNEMER, KRIEGER, MAURER, OLSON, THOMPSON, WEIDNER, WHISNANT, WINGARD

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**.

Authorizes board of elections officials to enhance or duplicate ballot for purposes of counting ballot by vote tally machine. Specifies that ballot that is duplicated may be counted only once under provisions relating to conduct of elections and once in any recount. Directs county clerks to develop security procedures governing counting of ballots. Requires that ballots be stored in secure location.

Requires person who establishes ballot drop site accessible to general public to file statement with county clerk listing name and address of person, contact information, location of drop site, time that ballots will be transferred to county clerk and date drop site will be removed. Allows county clerk to remove drop site if statement is not filed.

Directs county clerks to provide training for persons who watch receiving and counting of votes.

Specifies that valid ballots not counted in original tally of ballots must be segregated and counted in ballot recount, unless otherwise ordered by court. Directs county clerk to retain ballots not counted in original tally as segregated.

Provides that nomination or election of person, or approval or rejection of measure, may be set aside in case of mistake in canvass of votes.

A BILL FOR AN ACT

1
2 Relating to elections; creating new provisions; and amending ORS 254.074, 254.482, 254.505, 258.026
3 and 258.211.

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

5 **SECTION 1.** ORS 254.505 is amended to read:

6 254.505. (1) Only official ballots may be counted.

7 (2) Any vote from which it is impossible to determine the elector's choice for the office or
8 measure may not be counted.

9 (3) An elector may not place on the ballot a sticker bearing the name of a person or use any
10 other method or device, except writing or using a voting machine, to vote for a person whose name
11 is not printed on the ballot. Any ballot that has a sticker or other device is void and may not be
12 counted.

13 (4) Counting board clerks shall disregard misspelling or abbreviations of the names of candi-
14 dates if it can be ascertained from the ballot for whom the vote was intended.

15 (5) **Except as provided in this subsection, a counting board clerk, other elections official**
16 **or other person may not alter, write on or in any other way modify a ballot cast by an**
17 **elector. Where the elector's choice for the office or measure is clear, a board of elections**
18 **officials may enhance or duplicate the ballot so that the ballot may be counted by a vote tally**
19 **machine. The members of the board of elections officials may not all be members of the same**
20 **political party. A ballot that is enhanced or duplicated may be counted only once under this**
21 **chapter and once in any recount conducted under ORS chapter 258.**

22 [(2)] (6) When ballots are counted by counting boards, the board chairperson, using ink, imme-
23 diately shall initial the back of the wholly or partially void ballot and write on it "Not counted

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 for _____” (stating the office or measure). The counting board shall seal the wholly void ballots
 2 in an envelope.

3 **SECTION 2.** ORS 254.074 is amended to read:

4 254.074. (1) Each county clerk shall file a county elections security plan with the Secretary of
 5 State not later than:

- 6 (a) January 31 of each calendar year; and
- 7 (b) One business day after any revision is made to the county elections security plan.

8 (2) A county elections security plan shall include, but is not limited to:

- 9 (a) A written security agreement entered into with any vendor handling ballots;
- 10 (b) Security procedures for transporting ballots;
- 11 (c) Security procedures at official places of deposit for ballots;
- 12 (d) Security procedures for processing ballots;
- 13 (e) Security procedures governing election observers;
- 14 (f) Security procedures for ballots located in county elections work areas, buildings and storage
 15 areas;
- 16 (g) Security procedures for vote tally systems, including computer access to vote tally systems;

17 [*and*]

18 **(h) Security procedures governing the timing, location and method of tallying ballots; and**

19 [*h*] **(i) Post-election ballot security.**

20 (3) A security plan developed and filed under this section is confidential and not subject to dis-
 21 closure under ORS 192.410 to 192.505.

22 **SECTION 3. Sections 4 and 5 of this 2009 Act are added to and made a part of ORS**
 23 **chapter 254.**

24 **SECTION 4. Subject to ORS 254.478, ballots received by the county clerk shall be stored**
 25 **in a secure location designated by the county clerk. Only persons authorized by the county**
 26 **clerk shall have access to the secure location.**

27 **SECTION 5. (1) In an election conducted by mail, a person, except an elections official**
 28 **in performance of duties, may not establish a place of deposit for ballots cast in the election**
 29 **that is accessible to the general public unless the person first files with the county clerk of**
 30 **the county in which the place of deposit is to be established a signed written statement de-**
 31 **scribed in this section.**

32 **(2) The statement required under subsection (1) of this section must contain:**

- 33 **(a) The name and address of the person establishing the place of deposit;**
- 34 **(b) The telephone number, electronic mail address or other contact information for the**
 35 **person;**

- 36 **(c) A description of the location of the place of deposit;**

- 37 **(d) A description of the date and time that the person will transfer ballots to the office**
 38 **of the county clerk or other secure location designated by the county clerk; and**

- 39 **(e) The date that the place of deposit will be removed.**

40 **(3) If a person establishes a place of deposit in violation of any provision of this section,**
 41 **the county clerk may take action to remove the place of deposit and take custody of any**
 42 **ballots left at the place of deposit or left in the possession of the person who established the**
 43 **place of deposit. This subsection applies in addition to any penalties that may be imposed**
 44 **under ORS chapter 260 for violation of this section.**

45 **SECTION 6.** ORS 254.482 is amended to read:

1 254.482. (1) After the date that ballots are mailed as provided in ORS 254.470, the county clerk,
 2 if requested, shall permit authorized persons to be at the office of the county clerk to watch the
 3 receiving and counting of votes. The authorization shall be in writing, shall be signed by an officer
 4 or its county affiliate of a political party, a candidate or the county clerk and shall be filed with the
 5 county clerk. The county clerk shall permit only so many persons as watchers under this section
 6 as will not interfere with an orderly procedure at the office of the county clerk.

7 **(2) Any person authorized to watch the receiving and counting of votes under this section**
 8 **must first receive training provided by the county clerk. The county clerk shall schedule the**
 9 **training prior to any election conducted by mail. A person is not required to receive training**
 10 **under this subsection more than once in a calendar year.**

11 **SECTION 7.** ORS 258.211 is amended to read:

12 258.211. (1) The ballot boxes containing the ballots to be recounted shall be opened by the offi-
 13 cial directed to make the recount only in the presence of the counting board and the persons re-
 14 ferred to in this section.

15 (2) The counting board shall conduct the recount by hand and, if requested, permit:

16 (a) In the instance of a nomination or office, an affected candidate or an elector authorized in
 17 writing by an affected candidate, and an elector authorized in writing by each major or minor poli-
 18 tical party to be present to watch the recount.

19 (b) In the instance of a measure, one elector advocating and one elector opposing the measure
 20 to be present to watch the recount.

21 (3) For ballots cast using a voting machine:

22 (a) The county clerk shall deposit the paper record copy recorded by the machine into the ballot
 23 box; and

24 (b) The paper record copies are the ballots to be recounted under this section.

25 **(4) All valid ballots shall be counted in any recount conducted under this chapter. Unless**
 26 **otherwise ordered by a court, any ballot determined by the county clerk to be valid and that**
 27 **was not counted in the original tally of ballots for the measure, nomination or office con-**
 28 **ducted under ORS chapter 254 shall be segregated, counted and included in the abstract of**
 29 **votes for the recount. The county clerk shall retain the ballots, as segregated, during the**
 30 **period that ballots must be retained under ORS 254.535.**

31 **SECTION 8.** ORS 258.026 is amended to read:

32 258.026. (1) The nomination or election of a person [shall] **may** not be set aside for any cause
 33 listed in ORS 258.016 (3) to (5) unless:

34 (a) The person nominated or elected had knowledge of or connived in the cause of the contest;
 35 [or]

36 (b) The number of votes taken from the person nominated or elected by reason of the cause of
 37 the contest would reduce the legal votes of the person below the number of legal votes given to
 38 another person for the same nomination or office[.]; **or**

39 **(c) In the case of a mistake in the canvass of votes, it can be determined that the nom-**
 40 **ination or election would have been given to one of the candidates other than the candidate**
 41 **nominated or elected if all votes not canvassed due to the mistake had been canvassed for**
 42 **the other candidate.**

43 (2) The nomination or election of a person [shall] **may** not be set aside for the cause described
 44 in ORS 258.016 (6) unless it can be determined that the nomination or election would have been
 45 given to one of the candidates other than the candidate nominated or elected if all votes not cast

1 or tallied due to the error had been cast or tallied for the other candidate.

2 (3) The approval or rejection of a measure [*shall*] **may** not be set aside unless it appears that:

3 (a) The number of votes taken from the approval or rejection by reason of the contest would
4 reverse the outcome of the election; [*or*]

5 (b) The outcome of the election would have been reversed if all votes not cast or tallied due to
6 an error under ORS 258.016 (6) had been cast or tallied for approval or rejection of the measure[.];

7 **or**

8 (c) **In the case of a mistake in the canvass of votes, the outcome of the election would**
9 **have been reversed if all votes not canvassed due to the mistake had been canvassed for**
10 **approval or rejection of the measure.**

11 **SECTION 9. Sections 4 and 5 of this 2009 Act and the amendments to ORS 254.074,**
12 **254.482, 254.505, 258.026 and 258.211 by sections 1, 2 and 6 to 8 of this 2009 Act apply only to**
13 **elections conducted on or after the effective date of this 2009 Act.**

14