

Senate Bill 337

Sponsored by Senator WALKER (Presession filed.)

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 Supreme Court to rule on ballot title petition not later than 45 days after oral argument or 45 days after all memoranda have been filed in response to petition, whichever is later.

Requires Secretary of State to review signature twice before signature is counted or rejected on initiative or referendum petition. Directs secretary to prescribe employee training program conducted by expert in signature verification. Allows secretary to authorize persons to be present to watch verification of signatures.

Allows elector to challenge active registration status of elector who did not vote in election for purposes of determining number of registered voters eligible to vote in election described in section 11 (8), Article XI of Oregon Constitution.

Directs Secretary of State or Attorney General to conclude investigation of election law violation not later than one year after receipt of complaint and to notify elector not later than 90 days after receipt of complaint if secretary or Attorney General requires additional time to determine whether violation has occurred.

A BILL FOR AN ACT

1
2 Relating to elections; creating new provisions; and amending ORS 250.085, 250.105, 254.415 and
3 260.345.

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

5 **SECTION 1.** ORS 250.085 is amended to read:

6 250.085. (1) Any elector dissatisfied with a ballot title prepared by the Legislative Assembly for
7 a measure referred to the people by the assembly and filed with the Secretary of State may petition
8 the Supreme Court seeking a different title. The petition shall state the reasons that the title filed
9 with the Secretary of State does not substantially comply with the requirements of ORS 250.035.

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

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

16 (a) Not later than the 10th business day after the Attorney General certifies a ballot title or a
17 corrected ballot title to the Secretary of State, whichever is later; or

18 (b) If the title is provided by the Legislative Assembly under ORS 250.075, not later than the
19 10th business day after the Legislative Assembly files the ballot title with the Secretary of State.

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

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

25 (6) When reviewing a title certified by the Attorney General, the Supreme Court shall not con-

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 sider arguments concerning the ballot title not presented in writing to the Secretary of State unless
 2 the court determines that the argument concerns language added to or removed from the draft title
 3 after expiration of the comment period provided in ORS 250.067.

4 [(7) *The review by the Supreme Court shall be conducted expeditiously to ensure the orderly and*
 5 *timely circulation of the petition or conduct of the election at which the measure is to be submitted to*
 6 *the electors.*]

7 **(7) The Supreme Court shall certify a ballot title or refer the ballot title to the Attorney**
 8 **General under subsection (8) of this section not later than 45 days after all memoranda have**
 9 **been filed in response to a petition described in subsection (1) or (2) of this section or 45 days**
 10 **after oral arguments have been presented in response to a petition described in subsection**
 11 **(1) or (2) of this section, whichever is later.**

12 (8) If the Supreme Court determines that the latest ballot title certified by the Attorney General
 13 or prepared by the Legislative Assembly substantially complies with the requirements of ORS
 14 250.035, the court shall certify the title to the Secretary of State. If the Supreme Court determines
 15 that the latest ballot title certified by the Attorney General or prepared by the Legislative Assembly
 16 does not substantially comply with the requirements of ORS 250.035, the court shall modify the
 17 ballot title and certify the ballot title to the Secretary of State or refer the ballot title to the At-
 18 torney General for modification.

19 (9) Not later than five business days after the Supreme Court refers a ballot title to the Attor-
 20 ney General under this section, the Attorney General shall file a modified ballot title with the Su-
 21 preme Court and serve copies of the modified ballot title on all parties to the ballot title review
 22 proceeding. If no party to the ballot title review proceeding files [*an objection*] **a petition objecting**
 23 **to the modified ballot title within five business days after the date the modified ballot title is filed,**
 24 **the Supreme Court shall certify the modified ballot title to the Secretary of State and enter an ap-**
 25 **pellate judgment the next judicial day. If any of the parties to the ballot title review proceeding**
 26 **timely files a petition objecting to the modified ballot title, the Supreme Court shall review the**
 27 **modified ballot title to determine whether the modified ballot title substantially complies with the**
 28 **requirements of ORS 250.035.**

29 (10) [*Upon the filing of a petition under subsection (9) of this section objecting to a modified ballot*
 30 *title*] **Not later than 45 days after a petition objecting to a modified ballot title, and any re-**
 31 **sponses to the petition, have been filed under subsection (9) of this section:**

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

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

39 **SECTION 2.** ORS 250.105 is amended to read:

40 250.105. (1)(a) An initiative or referendum petition relating to a state measure must be filed with
 41 the Secretary of State for the purpose of verifying whether the petition contains the required num-
 42 ber of signatures of electors. **The secretary shall verify whether a state initiative or referen-**
 43 **dum petition contains the required number of signatures of electors.**

44 (b) Signatures on a prospective petition for a state measure to be initiated shall be considered
 45 under this section for the purpose of verifying whether the initiative petition contains the required

1 number of signatures of electors.

2 (c) When filing an initiative or referendum petition, the chief petitioner shall sort the signature
3 sheets on the basis of the name of the person who obtained the signatures on the sheet.

4 (d) The secretary shall adopt rules establishing procedures for verifying signatures on an initi-
5 ative or referendum petition.

6 (e) The filed initiative or referendum petition must contain only original signatures. The secre-
7 tary or county clerk shall verify each petition in the order in which the petitions are filed with the
8 secretary.

9 (2) The secretary may not accept an initiative or referendum petition relating to a state measure
10 for filing if the petition contains less than 100 percent of the required number of signatures.

11 (3) If *[an]* **a state** initiative or referendum petition is submitted not less than 165 days before
12 the election at which the proposed measure is to be voted upon and if the secretary determines that
13 insufficient signatures have been submitted but the deadline for filing the petition has not passed,
14 the petitioners may submit additional signatures.

15 (4) The secretary by rule shall designate a statistical sampling technique to verify whether a
16 petition contains the required number of signatures of electors. **A signature may be counted or
17 rejected under this subsection only if the signature has been reviewed at least twice by the
18 secretary.** A petition may not be rejected for the reason that it contains less than the required
19 number of signatures unless two separate sampling processes both establish that the petition lacks
20 the required number of signatures. The second sampling must contain a larger number of signatures
21 than the first sampling. If two samplings are required under this subsection, the total number of
22 signatures verified on the petition shall be not less than five percent of the total number of signa-
23 tures on the petition.

24 (5) For purposes of estimating the number of duplicate signatures contained in a petition, the
25 secretary shall apply at least an eight percent duplication rate in the first sampling of signatures
26 on all petitions. If a second sampling of signatures is required under subsection (4) of this section,
27 the secretary shall calculate an estimated signature duplication rate for each petition for which a
28 second sampling is required. The calculation shall be based on the number of electors the secretary
29 determines have signed a specific petition more than once.

30 (6) When verifying signatures for a state initiative or referendum petition, the secretary *[or*
31 *county clerk]* shall identify on an elector's voter registration record or other database that the
32 elector signed the specific initiative or referendum petition.

33 (7) The secretary *[of State]* may employ professional assistance to determine the sampling tech-
34 nique to be designated under subsection (4) of this section.

35 **(8) The secretary shall prescribe by rule a training program for persons employed by the
36 secretary for purposes of verifying signatures on state initiative and referendum petitions.
37 The training shall be conducted by an expert in signature verification.**

38 **(9) If requested, the secretary shall authorize persons to be present at the office of the
39 secretary to watch the verification of signatures, as described in this section. The authori-
40 zation shall be in writing and shall be signed by and filed with the secretary. The secretary
41 shall authorize only as many persons under this subsection as will not interfere with an or-
42 derly procedure at the office of the secretary.**

43 **SECTION 3.** ORS 254.415 is amended to read:

44 254.415. (1) The county clerk, an elections official or any elector shall challenge the ballot of
45 any person offering to vote whom the clerk, official or elector knows or suspects not to be qualified

1 as an elector.

2 (2) The **county** clerk, **an elections** official or **any** elector challenging the ballot shall make,
3 under oath or affirmation before a county clerk or other elections official, a written and numbered
4 statement of challenge. The statement shall contain the name and residence address of the
5 challenger, the name of the person challenged and a statement of the facts upon which the challenge
6 is based.

7 (3) A person's ballot may be challenged at any time before the ballot is removed from its return
8 envelope for processing.

9 **(4) For purposes of determining the number of registered voters eligible to vote in an**
10 **election described in section 11 (8), Article XI of the Oregon Constitution, during the period**
11 **beginning the day after an election and continuing until the 20th day after the election, any**
12 **elector may challenge the active registration status of an elector who did not vote in the**
13 **election. If after a challenge made under this subsection the county clerk determines that**
14 **the registration of an elector should not be considered active, the county clerk may not**
15 **consider the person to be eligible to vote for purposes of section 11 (8), Article XI of the**
16 **Oregon Constitution.**

17 **SECTION 4.** ORS 260.345 is amended to read:

18 260.345. (1) Any elector may file with any filing officer a written complaint alleging that a vio-
19 lation of an election law or rule adopted by the Secretary of State under ORS chapters 246 to 260
20 has occurred and stating the reason for believing that the violation occurred and any evidence re-
21 lating to it. A complaint alleging a violation involving the Secretary of State, a candidate for the
22 office of Secretary of State, or any political committee or person supporting the Secretary of State
23 or a candidate for the office of Secretary of State may be filed with the Attorney General. The
24 Secretary of State or Attorney General shall not accept an anonymous complaint.

25 (2) The Secretary of State by rule shall prescribe the procedure for processing a complaint filed
26 with any person other than the Secretary of State. If the complaint concerns the Secretary of State,
27 any candidate for the office of the Secretary of State, or any political committee or person sup-
28 porting the candidacy of the Secretary of State or of another person for the office of Secretary of
29 State, the complaint and any additional information relating to the complaint shall be sent to the
30 Attorney General.

31 (3)(a) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of
32 State or Attorney General immediately shall examine the complaint to determine whether a vio-
33 lation of an election law or rule has occurred and shall make any investigation the Secretary of
34 State or Attorney General considers necessary. Except as provided in this [subsection] **paragraph**,
35 within 48 hours of receiving a complaint under subsection (1) or (2) of this section, the Secretary
36 of State or Attorney General shall notify the person who is the subject of the complaint that a
37 complaint has been received. If the Secretary of State or Attorney General receives a complaint or
38 complaints involving 25 or more individuals or political committees in any 24-hour period, the Sec-
39 retary of State or Attorney General need not notify the persons who are the subjects of those
40 complaints within 48 hours of receiving the complaints but shall notify those persons not later than
41 10 business days after receiving the complaint or complaints.

42 **(b) Not later than 90 days after receipt of a complaint under subsection (1) or (2) of this**
43 **section, the Secretary of State or Attorney General shall notify in writing the elector who**
44 **filed the complaint whether the Secretary of State or Attorney General requires additional**
45 **time to determine whether a violation of an election law or rule has occurred. Not later than**

1 **one year after receipt of the complaint, the Secretary of State or Attorney General shall**
 2 **determine whether a violation has occurred. Written notification provided under this para-**
 3 **graph shall state only that an extension of time is needed to determine whether a violation**
 4 **has occurred.**

5 **(c) Paragraph (b) of this subsection does not apply to a complaint filed under subsection**
 6 **(1) or (2) of this section involving an alleged violation subject to a penalty under ORS 260.993.**

7 (4) If the Secretary of State believes after an investigation under subsection (3) of this section
 8 that a violation of an election law or rule has occurred, the secretary:

9 (a) In the case of a violation that is subject to a penalty under ORS 260.993, immediately shall
 10 report the findings to the Attorney General and request prosecution. If the violation involves the
 11 Attorney General, a candidate for that office or a political committee or person supporting or op-
 12 posing the Attorney General or a candidate for that office, the Secretary of State shall appoint an-
 13 other prosecutor for that purpose; or

14 (b) In the case of a violation not subject to a penalty under ORS 260.993, may impose a civil
 15 penalty under ORS 260.995.

16 (5) Upon receipt of a complaint or report under subsection (1), (2) or (4) of this section involving
 17 an alleged violation subject to a penalty under ORS 260.993, the Attorney General or other
 18 prosecutor immediately shall examine the complaint or report to determine whether a violation of
 19 an election law has occurred. If the Attorney General or prosecutor determines that a violation
 20 has occurred, the Attorney General or prosecutor immediately shall begin prosecution in the name
 21 of the state. The Attorney General or other prosecutor shall have the same powers in any county
 22 of this state as the district attorney for the county.

23 (6) Upon receipt of a complaint under subsection (1) or (2) of this section involving an alleged
 24 violation of an election law or rule not subject to a penalty under ORS 260.993, the Attorney Gen-
 25 eral shall examine the complaint to determine whether a violation of an election law or rule has
 26 occurred and shall make any investigation the Attorney General considers necessary. If the Attor-
 27 ney General believes after an investigation that a violation of an election law or rule has occurred,
 28 the Attorney General may impose a civil penalty under ORS 260.995.

29 (7) In the case of an alleged violation subject to a civil penalty under ORS 260.995, a complaint
 30 shall be filed by an elector under this section no later than 90 days following the election at which
 31 a violation of an election law or rule is alleged to have occurred, or 90 days following the date the
 32 violation of an election law or rule is alleged to have occurred, whichever is later.

33 (8) A filing officer having reason to believe that a violation of an election law or rule has oc-
 34 curred shall proceed promptly as though the officer had received a complaint. A filing officer shall
 35 proceed under this subsection no later than two years following the election at which a violation
 36 of an election law or rule is alleged to have occurred, or two years following the date the violation
 37 of an election law or rule is alleged to have occurred, whichever is later. If a filing officer has not
 38 proceeded within two years because of fraud, deceit, misleading representation or the filing officer
 39 could not have reasonably discovered the alleged violation, the filing officer shall proceed no later
 40 than five years following the election at which a violation of an election law or rule is alleged to
 41 have occurred, or five years following the date the violation of an election law or rule is alleged to
 42 have occurred, whichever is later.

43 **SECTION 5. (1) The amendments to ORS 250.085 by section 1 of this 2009 Act apply to**
 44 **ballot title petitions filed on or after the effective date of this 2009 Act.**

45 **(2) The amendments to ORS 250.105 by section 2 of this 2009 Act apply to state initiative**

1 or referendum petitions filed for signature verification on or after the effective date of this
2 2009 Act.

3 (3) The amendments to ORS 260.345 by section 4 of this 2009 Act apply to complaints re-
4 ceived on or after the effective date of this 2009 Act.

5
