

Enrolled
House Bill 2433

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Rules)

CHAPTER

AN ACT

Relating to elections; creating new provisions; amending ORS 249.037, 251.065, 260.005, 260.035, 260.038, 260.044, 260.046, 260.056, 260.232 and 260.241; and repealing ORS 260.735 and 260.737.

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

SECTION 1. ORS 249.037 is amended to read:

249.037. (1) **Except as otherwise provided in this section,** a nominating petition or declaration of candidacy shall be filed not sooner than the 250th day and not later than the 70th day before the date of the primary election.

(2) If a vacancy occurs in a partisan elective office after the 80th day and before the 70th day before the primary election, a nominating petition or declaration of candidacy for that office may be filed not later than the 65th day before the primary election.

[(2)] (3) [Notwithstanding subsection (1) of this section,] A declaration of candidacy for the office of precinct committeeperson may not be filed before February 1 immediately preceding the primary election.

SECTION 2. ORS 251.065 is amended to read:

251.065. (1)(a) **Except as provided in paragraph (b) of this subsection,** not later than the 68th day before the primary election, any candidate or agent on behalf of the candidate for nomination or election at the primary election to the office of President or Vice President of the United States, United States Senator, Representative in Congress or any state office as defined in ORS 249.002 may file with the Secretary of State a portrait of the candidate and a printed or typewritten statement of the reasons the candidate should be nominated or elected. A candidate or agent on behalf of the candidate for nomination or election to any county or city office, or to an elected office of a metropolitan service district organized under ORS chapter 268, may file a portrait and statement under this subsection if permitted under ORS 251.067.

(b) A portrait and statement may be filed not later than the 63rd day before the primary election in the event of a vacancy described in ORS 249.037 (2).

(2) Not later than the 70th day before the general election, any candidate or agent on behalf of the candidate for election at the general election to the office of President or Vice President of the United States, United States Senator, Representative in Congress or any state office as defined in ORS 249.002 may file with the Secretary of State a portrait of the candidate and a printed or typewritten statement of the reasons the candidate should be elected. A candidate or agent on behalf of the candidate for election to any county or city office, or to an elected office of a metropolitan service district organized under ORS chapter 268, may file a portrait and statement under this subsection if permitted under ORS 251.067.

(3) In the case of a special election to fill a vacancy as described in ORS 251.022, the Secretary of State by rule shall set the deadline for filing with the secretary a portrait of the candidate and a printed or typewritten statement of the reasons the candidate should be nominated or elected.

(4) Subject to subsections (1) to (3) of this section, the Secretary of State by rule shall establish the format of the statements permitted under this section.

(5) A portrait or statement filed under this section shall be accompanied by a telephone or electronic facsimile transmission machine number where the candidate may be contacted for purposes of ORS 251.087.

SECTION 3. ORS 260.005 is amended to read:

260.005. As used in this chapter:

(1)(a) "Candidate" means:

(A) An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual's consent, for nomination or election to public office;

(B) An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot; or

(C) A public office holder against whom a recall petition has been completed and filed.

(b) For purposes of this section and ORS 260.035 to 260.156, "candidate" does not include a candidate for the office of precinct committeeperson.

(2) "Committee director" means any person who directly and substantially participates in decision-making on behalf of a political committee concerning the solicitation or expenditure of funds and the support of or opposition to candidates or measures. The officers of a political party shall be considered the directors of any political party committee of that party, unless otherwise provided in the party's bylaws.

(3) Except as provided in ORS 260.007, "contribute" or "contribution" includes:

(a) The payment, loan, gift, forgiving of indebtedness, or furnishing without equivalent compensation or consideration, of money, services other than personal services for which no compensation is asked or given, supplies, equipment or any other thing of value:

(A) For the purpose of influencing an election for public office or an election on a measure, or of reducing the debt of a candidate for nomination or election to public office or the debt of a political committee; or

(B) To or on behalf of a candidate, political committee or measure;

(b) Any unfulfilled pledge, subscription, agreement or promise, whether or not legally enforceable, to make a contribution; and

(c) The excess value of a contribution made for compensation or consideration of less than equivalent value.

(4) "Controlled committee" means a political committee that, in connection with the making of contributions or expenditures:

(a) Is controlled directly or indirectly by a candidate or a controlled committee; or

(b) Acts jointly with a candidate or controlled committee.

(5) "Controlled directly or indirectly by a candidate" means:

(a) The candidate, the candidate's agent, a member of the candidate's immediate family or any other political committee that the candidate controls has a significant influence on the actions or decisions of the political committee; or

(b) The candidate's principal campaign committee and the political committee both have the candidate or a member of the candidate's immediate family as a treasurer or director.

(6) "County clerk" means the county clerk or the county official in charge of elections.

(7) "Elector" means an individual qualified to vote under section 2, Article II of the Oregon Constitution.

(8) Except as provided in ORS 260.007, "expend" or "expenditure" includes the payment or furnishing of money or anything of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including support of or opposition to a candidate, political committee or measure, or for reducing the debt of a candidate for nomination or election to public office. "Expenditure" also includes contributions made by a candidate or political committee to or on behalf of any other candidate or political committee.

(9) "Filing officer" means:

(a) The Secretary of State:

(A) Regarding a candidate for public office;

(B) Regarding a statement required to be filed under ORS 260.118;

(C) Regarding any measure; or

(D) Regarding any political committee.

(b) In the case of an irrigation district formed under ORS chapter 545, "filing officer" means:

(A) The county clerk, regarding any candidate for office or any measure at an irrigation district formation election where the proposed district is situated wholly in one county;

(B) The county clerk of the county in which the office of the secretary of the proposed irrigation district will be located, regarding any candidate for office or any measure at an irrigation district formation election where the proposed district is situated in more than one county; or

(C) The secretary of the irrigation district for any election other than an irrigation district formation election.

(10) "Independent expenditure" means an expenditure by a person for a communication in support of or in opposition to a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any political committee or agent of a political committee supporting or opposing a measure. For purposes of this subsection:

(a) "Agent" means any person who has:

(A) Actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate or on behalf of a political committee supporting or opposing a measure; or

(B) Been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities the person may authorize expenditures.

(b)(A) "Clearly identified" means, with respect to candidates:

(i) The name of the candidate involved appears;

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

(B) "Clearly identified" means, with respect to measures:

(i) The ballot number of the measure appears;

(ii) A description of the measure's subject or effect appears; or

(iii) The identity of the measure is apparent by unambiguous reference.

(c) "Communication in support of or in opposition to a clearly identified candidate or measure" means:

(A) The communication, taken in its context, clearly and unambiguously urges the election or defeat of a clearly identified candidate for nomination or election to public office, or the passage or defeat of a clearly identified measure;

(B) The communication, as a whole, seeks action rather than simply conveying information; and

(C) It is clear what action the communication advocates.

(d) “Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate, or any political committee or agent of a political committee supporting or opposing a measure”:

(A) Means any arrangement, coordination or direction by the candidate or the candidate’s agent, or by any political committee or agent of a political committee supporting or opposing a measure, prior to the publication, distribution, display or broadcast of the communication. An expenditure shall be presumed to be so made when it is:

(i) Based on information about the plans, projects or needs of the candidate, or of the political committee supporting or opposing a measure, and provided to the expending person by the candidate or by the candidate’s agent, or by any political committee or agent of a political committee supporting or opposing a measure, with a view toward having an expenditure made; or

(ii) Made by or through any person who is or has been authorized to raise or expend funds, who is or has been an officer of a political committee authorized by the candidate or by a political committee or agent of a political committee supporting or opposing a measure, or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate’s principal campaign committee or agent or from any political committee or agent of a political committee supporting or opposing a measure.

(B) Does not mean providing to the expending person upon request a copy of this chapter or any rules adopted by the Secretary of State relating to independent expenditures.

(11) “Initiative petition” means a petition to initiate a measure for which a prospective petition has been filed but that is not yet a measure.

(12) “Judge” means judge of the Supreme Court, Court of Appeals, circuit court or the Oregon Tax Court.

(13) “Mass mailing” means more than 200 substantially similar pieces of mail, but does not include a form letter or other mail that is sent in response to an unsolicited request, letter or other inquiry.

(14) “Measure” includes any of the following submitted to the people for their approval or rejection at an election:

- (a) A proposed law.
- (b) An Act or part of an Act of the Legislative Assembly.
- (c) A revision of or amendment to the Oregon Constitution.
- (d) Local, special or municipal legislation.
- (e) A proposition or question.

(15) “Occupation” means:

- (a) The nature of an individual’s principal business; and
- (b) If the individual is employed by another person, the business name and address, by city and state, of the employer.

(16) “Person” means an individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity.

(17) “Petition committee” means an initiative, referendum or recall petition committee organized under ORS 260.118.

(18) “Political committee” means a combination of two or more individuals, or a person other than an individual, that has:

(a) Received a contribution for the purpose of supporting or opposing a candidate, measure or political party; or

(b) Made an expenditure for the purpose of supporting or opposing a candidate, measure or political party. For purposes of this paragraph, an expenditure does not include:

(A) A contribution to a candidate or political committee that is required to report the contribution on a statement filed under ORS 260.057, 260.076 or 260.102 or a certificate filed under ORS 260.112; or

(B) An independent expenditure for which a statement is required to be filed by a person under ORS 260.044.

(19) "Public office" means any national, state, county, district, city office or position, except a political party office, that is filled by the electors.

(20) "Recall petition" means a petition to recall a public officer for which a prospective petition has been filed but that is not yet a measure.

(21) "Referendum petition" means a petition to refer a measure for which a prospective petition has been filed but that is not yet a measure.

(22) "Regular district election" means the regular district election described in ORS 255.335.

[23] "Slate mailer" means a mass mailing that supports or opposes a total of three or more candidates or measures.]

[24(a) "Slate mailer organization" means any person who directly or indirectly:]

[A] Is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers; and]

[B] Receives or is promised payment for producing one or more slate mailers or for endorsing or opposing, or refraining from endorsing or opposing, a candidate or measure in one or more slate mailers.]

[b) "Slate mailer organization" does not include:]

[A] A political committee organized by a political party; or]

[B] A political committee organized by the caucus of either the Senate or the House of Representatives of the Legislative Assembly.]

[25] (23) "State office" means the office of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, state Senator, state Representative, judge or district attorney.

SECTION 4. ORS 260.035 is amended to read:

260.035. (1) Not later than the third business day after a political committee first receives a contribution or makes an expenditure, the political committee shall:

(a) Appoint a treasurer who shall be an elector of this state;

(b) Certify the name and address of the treasurer to the filing officer; and

(c) File a statement of organization under ORS 260.039 or 260.042.

(2) A candidate may serve as the candidate's own treasurer or may appoint and certify to the filing officer the name and address of a treasurer. A candidate's treasurer shall perform all the duties prescribed for the candidate under ORS 260.035 to 260.156.

[2] (3) Contributions shall be received and expenditures made by or through the treasurer of the political committee **or the candidate or the treasurer of a principal campaign committee.**

[3] (4) Any change in information required under this section shall be indicated in an amended certification filed not later than the 10th day after the change in information.

SECTION 5. ORS 260.038 is amended to read:

260.038. (1) An individual may be appointed and serve as treasurer of a candidate, [and] a political committee **or petition committee** or of two or more candidates, [or] political committees **or petition committees.**

(2) A candidate, [or] political committee **or petition committee** may remove a treasurer.

(3) In event of the death, resignation or removal of a treasurer before compliance with all obligations of a treasurer under ORS [260.005 and] 260.035 to 260.156, [a candidate may and a political committee] **no later than 14 days after the death, resignation or removal of the treasurer:**

(a) **A candidate shall appoint a successor and certify the name and address of the successor in the manner of an original appointment or certify to the filing officer that the candidate serves as the candidate's own treasurer.**

(b) **A committee director** shall appoint a successor and certify the name and address of the successor in the manner of an original appointment.

(c) **A chief petitioner shall appoint a successor and certify the name and address of the successor in the manner of an original appointment.**

SECTION 6. ORS 260.044 is amended to read:

260.044. (1) A person shall file a statement of independent expenditures if the person makes independent expenditures in a total amount of more than [~~\$100~~] **\$750** in a calendar year. The statement shall be filed with the Secretary of State.

(2) A statement described in subsection (1) of this section shall be filed not later than seven calendar days after the total amount of independent expenditures exceeds [~~\$100~~] **\$750** in a calendar year. The accounting period for the statement required by subsection (1) of this section begins on the date that an independent expenditure is made. The statement shall specify the candidate or measure supported or opposed by the independent expenditure. The secretary by rule shall prescribe the form of the statement.

(3) Notwithstanding ORS 260.005 (18), a person who solicits and receives a contribution or contributions is a political committee and shall file a statement of organization under ORS 260.042 and the statements required by ORS 260.057 or 260.076.

(4) For purposes of this section:

(a) An independent expenditure does not include a contribution to a candidate or political committee that is required to report the contribution on a statement filed under ORS 260.057, 260.076 or 260.102 or a certificate filed under ORS 260.112;

(b) An independent expenditure does not include a contribution to a candidate who is not required to file a statement of organization under ORS 260.043; and

(c) A person is not a political committee under subsection (3) of this section if all contributions received by the person are:

(A) Designated to an identified candidate or political committee;

(B) Delivered by the person to the designated candidate or political committee not later than seven business days after the contribution is received; and

(C) Required to be reported as contributions by a candidate or political committee on a statement filed under ORS 260.057, 260.076 or 260.102 or a certificate filed under ORS 260.112.

SECTION 7. ORS 260.046 is amended to read:

260.046. (1) A filing officer, in accordance with rules adopted by the Secretary of State, may discontinue the statement of organization of a candidate, principal campaign committee, [~~or~~] political committee **or petition committee** if the candidate[, *principal campaign committee or political*] **or** committee has not filed a statement of contributions received or expenditures made under this chapter.

(2) The Secretary of State shall adopt rules prescribing conditions and procedures under which a filing officer may discontinue a statement of organization under this section.

(3) If a filing officer discontinues a statement of organization under this section, the filing officer shall provide written notice to the candidate, principal campaign committee, [~~or~~] political committee **or petition committee** that the statement has been discontinued.

SECTION 8. ORS 260.056 is amended to read:

260.056. (1) A loan made by or to a candidate, political committee or petition committee must be by written agreement.

(2) A candidate, political committee or petition committee shall keep a copy of any written loan agreement with the detailed accounts of the candidate or committee required under ORS 260.055.

(3) Notwithstanding ORS 260.055, a candidate, political committee or petition committee shall preserve a written loan agreement **for at least two years after the statement of the loan is filed under ORS 260.057 or until the loan is repaid, whichever is later.**

SECTION 9. ORS 260.232 is amended to read:

260.232. (1) The Secretary of State may impose a civil penalty as provided in this section, in addition to any other penalty that may be imposed, for:

(a) Failure to file a statement or certificate required to be filed under ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.102, 260.112 or 260.118.

(b) Failure to include in a statement filed under ORS 260.057, 260.076, 260.078, 260.083, 260.102, 260.112 or 260.118 the information required under ORS 260.057, 260.076, 260.083, 260.102 or 260.118.

(2)(a) If a person required to file has not filed a statement or certificate complying with applicable provisions of ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.085, 260.102, 260.112 or 260.118 within the time specified in ORS 260.044, 260.057, 260.076, 260.078 or 260.118, the Secretary of State by *[certified]* **first class** mail shall notify the person that a penalty may be imposed and that the person has 20 days **from the service date on the notice** to request a hearing before the Secretary of State.

(b) If the person required to file is a candidate or the principal campaign committee of a candidate, the Secretary of State shall send the notice described in paragraph (a) of this subsection by *[certified]* **first class** mail to the *[individual who is the]* candidate and *[by first class mail]* to the candidate's treasurer or the treasurer of the candidate's principal campaign committee. The notice sent *[by certified mail]* to the *[individual who is a]* candidate shall be used for purposes of determining the deadline for requesting a hearing under subsection (3) of this section. The Secretary of State is not required to send two notices if the candidate serves as the treasurer of the candidate's principal campaign committee.

(3) A hearing on whether to impose a civil penalty and to consider circumstances in mitigation shall be held by the Secretary of State:

(a) Upon request of the person against whom the penalty may be assessed, if the request is made not later than the 20th day after the person received the notice sent under subsection (2) of this section;

(b) Upon request of the filing officer with whom a statement or certificate was required to be filed but was not filed; or

(c) Upon the Secretary of State's own motion.

(4) A hearing under subsection (3) of this section shall be held not later than 45 days after the deadline for the person against whom the penalty may be assessed to request a hearing. However, if requested by the person against whom the penalty may be assessed, a hearing under subsection (3) of this section shall be held not later than 60 days after the deadline for the person against whom the penalty may be assessed to request a hearing.

(5) The Secretary of State shall issue an order not later than 90 days after a hearing or after the deadline for requesting a hearing if no hearing is held.

(6) The person against whom a penalty may be assessed need not appear in person at a hearing held under this section, but instead may submit written testimony and other evidence, subject to the penalty for false swearing, to the Secretary of State for entry in the hearing record. The testimony and other evidence must be received by the secretary not later than three business days before the day of the hearing **and may be submitted electronically**.

(7) A civil penalty imposed under this section may not be more than the following:

(a) For failure to file a statement or certificate required to be filed under ORS 260.044, 260.057, 260.076, 260.078, 260.083, 260.102, 260.112 or 260.118, 10 percent of the total amount of the contribution or expenditure required to be included in the statement or certificate; or

(b) For each failure to include in a statement filed under ORS 260.057, 260.076, 260.078, 260.083, 260.102, 260.112 or 260.118 the information required under ORS 260.057, 260.076, 260.083, 260.102 or 260.118, 10 percent of the total amount of the contribution or expenditure required to be included in the statement.

(8) The Secretary of State, upon a showing of mitigating circumstances, may reduce the amount of the penalty described in subsection (7) of this section.

(9) Except as otherwise provided by this section, civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 10. ORS 260.241 is amended to read:

260.241. (1) Despite delay in the filing of statements relating to a candidate's nomination required to be filed under ORS 260.057, or in the filing of a certificate described in ORS 260.112 in lieu of a statement required under ORS 260.057, prior to the nominating election, the candidate's name shall appear on the general election ballot if those statements or the certificate is filed before the 61st day before the general election.

(2) A candidate's name [shall] **may** not be placed on the general election ballot if the statements or certificate referred to in subsection (1) of this section is not filed before the 61st day before the general election.

(3) If the statements or certificate referred to in subsection (1) of this section is not filed by the 68th day before the general election, the filing officer by mail shall notify the **candidate** [person required to file the statements or certificate] that the candidate's name may not be placed on the general election ballot. The filing officer shall send the notice described in this subsection by [certified] **first class** mail to the [individual who is the] candidate and [by first class mail to] the candidate's treasurer or the treasurer of the candidate's principal campaign committee. The filing officer is not required to send two notices if the candidate serves as the treasurer of the candidate's principal campaign committee.

SECTION 11. ORS 260.735 and 260.737 are repealed.

SECTION 12. (1) **The amendments to ORS 260.038 by section 5 of this 2011 Act apply to an appointment made in the event of the death, resignation or removal of a treasurer that occurs on or after the effective date of this 2011 Act.**

(2) **The amendments to ORS 260.044 by section 6 of this 2011 Act apply to calendar years beginning on or after the effective date of this 2011 Act.**

(3) **The amendments to ORS 260.056 by section 8 of this 2011 Act apply to written loan agreements for loans that have not been repaid as of the effective date of this 2011 Act.**

(4) **The amendments to ORS 260.232 and 260.241 by sections 9 and 10 of this 2011 Act apply to notifications sent on or after the effective date of this 2011 Act.**

Passed by House April 12, 2011

Received by Governor:

Repassed by House June 17, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

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Passed by Senate June 15, 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State