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Measure Description:

Prohibits school district, education service district and community college district elections from being conducted in manner that impairs ability of members of protected class to have equal opportunity to elect candidates of their choice as result of dilution or abridgment of rights of electors who are members of protected class.

Government Unit(s) Affected:

Oregon Judicial Department (OJD), Secretary of State (SOS), Counties, School Districts, Education Service Districts (ESD), Community Colleges

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

The measure would prohibit a school district, education service district, or community college ("qualifying district") from holding an election in a manner that impairs the ability of members of a protected class to have equal opportunity to elect candidates of their choice, due to the dilution or abridgement of the rights of electors who are members of that protected class. The measure would permit the board of a qualifying district to authorize a change to the electoral system used by the qualifying district to comply with the measure. It would establish processes to ensure compliance with the measure, including allowing a member of a protected class to bring a civil action against a qualifying district to remedy any violations of the measure. The measure would require the Secretary of State (SOS) to ensure that various election forms provide a candidate for a qualifying district the option of providing the candidate's race and ethnicity. The SOS would be permitted to take any action necessary to prepare for the measure's implementation. The measure would take effect 91 days after the Legislative Assembly adjourns *sine die* and become operative on January 1, 2020.

School Districts, Education Service Districts, and Community Colleges

The measure would provide a cause of action if a member of a protected class in the qualifying district believes the current method of election of board members either by zone or at-large has the impact of disadvantaging voters from a protected class. If the member of the protected class were to prevail in the action, the qualifying district would be liable for reasonable attorney fees, costs and fees; if the qualifying district were to prevail, however, it would not be able to recover costs and fees.

The costs associated with this measure are unquantifiable. It is unclear how much, if any, litigation a qualifying district would be subject to under this measure. It is unknown how many complaints would be filed and what the fact patterns would be for each cause of action. The fiscal impact would depend on whether the district prevailed in the action; whether it incurred attorney fees, costs, and expenses; the extent to which litigation would increase the costs of a district's liability coverage; and whether the plaintiff seeks reimbursement for eligible costs. Litigation costs notwithstanding, a district would have the option of remedying a violation of the measure by adopting a new electoral system. Adopting such a system would require staff time and resources, development of maps, holding public meetings, and providing public notice, the costs of which would be paid by the district in question. Because the costs associated with this measure are uncertain, the measure would have an indeterminate fiscal impact on School Districts, Education Service Districts, and Community Colleges.

Counties

The impact to Counties would be to convert districts and precincts in the Oregon Centralized Voter Registration from “at-large” to votes by zone/district/ward, the effect of which would be only nominal. The measure would thus have no fiscal impact on Counties, as the costs would be passed on to the qualifying districts within the Counties.

Oregon Judicial Department (OJD)

The measure would create a new cause of action permitting a member of a protected class to file a cause of action in a circuit court, alleging the existence of “polarized voting” in violation of the measure. OJD anticipates that the measure would only marginally increase the number of cases filed in the circuit courts. That said, although the number of cases brought pursuant to the measure would be small, the substantive legal issues they would present could be complex, requiring additional judge and staff time as compared to an average civil action. Nevertheless, the fiscal impact to OJD would be minimal.

Secretary of State (SOS)

SOS would be required to develop and make publicly available on its Internet website a guide detailing “[t]he options and applicable timelines available to a board and qualifying district that receive a notice” that a member of a protected class intends to bring a cause of action against the district. Whether SOS would be required to publish individualized legal advice or general guidance and information is unclear. Assuming SOS were required to publish legal advice, SOS would need to consult with the Oregon Department of Justice (DOJ) to anticipate multiple fact patterns and provide options to qualifying districts. In doing so, SOS estimates that it would incur \$50,000 to \$100,000 in costs from DOJ services in the 2019-21 biennium. However, if the measure were interpreted to require SOS to provide only general guidance and information, it would have a minimal fiscal impact on SOS.