

## FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2021 Regular Session  
Legislative Fiscal Office

Measure: HB 2323 - 2

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

---

Prepared by: Michael Graham  
Reviewed by: Paul Siebert, Zane Potter, John Borden  
Date: March 25, 2021

---

### **Measure Description:**

Prohibits knowingly communicating materially false statement with intent to mislead electors about date of election, deadline for delivering ballot, voter registration deadline, method of registering to vote, locations at which elector may deposit ballot, qualifications of electors or voter registration status within 30 days of primary election or special election or within 60 days of general election.

### **Government Unit(s) Affected:**

Oregon Judicial Department (OJD), Oregon Government Ethics Commission (OGEC), Secretary of State (SOS), Department of Justice (DOJ)

### **Summary of Fiscal Impact:**

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

### **Analysis:**

House Bill 2323, as amended by the -2 amendments, would prohibit a person from knowingly or with reckless disregard communicating or causing to communicate a false statement of material fact that is intended to mislead electors regarding certain information about an election within 30 calendar days before a primary election or special election, or within 60 calendar days before a general election. It would authorize the Attorney General to institute civil proceedings, requiring circuit courts to give priority to any such hearing and determination. The measure would allow circuit court to enter injunctions, prohibitions, restraining orders, or any other actions deemed proper. It would require courts to award the prevailing party reasonable attorney fees at trial and on appeal. As an exclusive remedy for violations of this measure, it would require courts to impose a civil penalty of up to \$10,000 for any such violation. The measure would take effect on January 1, 2022.

### **Oregon Judicial Department**

The measure would create a new election offense under ORS Chapter 260 for communicating false statements of material fact intended to mislead electors and establishes an exclusive remedy for violations requiring the court to impose a civil penalty of up to \$10,000. OJD anticipates that the measure would result in the filing of a small number of additional cases in the circuit courts alleging violations of the measure, some of which might be appealed to the Court of Appeals. The measure would also require circuit courts to give priority to any such action, including its hearing and final determination, which would result in other cases being decided later than they otherwise would be. Overall, the measure is anticipated to have a minimal fiscal impact on OJD.

### **Oregon Government Ethics Commission**

The Oregon Government Ethics Commission's jurisdiction does not extend to elections-related matters unless the actions taken involve a public official, which falls within the parameters of ORS Chapter 244. Even if action authorized by this measure were to fall within of ORS Chapter 244, OGEC would incur no fiscal impact since investigations are part of its regular business. The measure would thus have no fiscal impact on OGEC.

### **Secretary of State**

The Secretary of State would not be required to enforce the measure, though it would require the SOS Elections Division to update its election manuals. The measure would otherwise have no fiscal impact on SOS.

### **Department of Justice**

The fiscal impact to the Department of Justice (DOJ) is indeterminate. The measure would authorize the Attorney General to institute civil proceedings related to violations of this measure; however, the measure does not require the Attorney General to institute such a proceeding.

The measure uses similar language to ORS 260.532, which prohibits any person from communicating a false statement of material fact relating to any candidate, political committee, or measure. Due to its similarities to ORS 260.532, DOJ anticipates that its Civil Enforcement Division could receive anywhere from 50-100 complaints each election cycle and need to litigate 3-5 cases per election cycle. Consequently, staff time would be needed to review, investigate, and potentially litigate complaints. The time needed to adjudicate or settle a complaint that advances to litigation would depend on the complexity of the case, the underlying facts, and the parties involved.

Given that the number of such complaints is unknown, the potential costs to DOJ's Civil Enforcement Division is indeterminate. Additionally, DOJ would be unable to bill another state agency for legal services, as the measure assigns responsibility to the Attorney General; therefore, any costs the Civil Enforcement Division would incur to enforce the measure would become a General Fund obligation.

It should also be noted that the measure does not specify where the civil penalties imposed under this measure would be deposited. The general rule, codified in ORS 260.995(8), is that that civil penalties related to election law violations are deposited into the State Treasury and credited to the General Fund. So, although it is unclear where these civil penalties would be deposited, they would most likely be deposited into the State Treasury and credited to the General Fund.