

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2323 - 4

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

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

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Measure Description:

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

Government Unit(s) Affected:

Oregon Judicial Department (OJD), Department of Justice (DOJ), Secretary of State (SOS), District Attorneys and their Deputies, Oregon Government Ethics Commission (OGEC)

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 -4 amendments, prohibits any person from knowingly or with reckless disregard communicating or causing to communicate a false statement of material fact that is intended to mislead electors about the date of an election, the deadline for submitting a ballot, the deadline for registering to vote, the method of registering to vote, locations to submit a ballot, voter registration qualifications, or voter registration status. This prohibition applies to any communication within 30 calendar days before a primary election or special election, or any communication within 60 calendar days before a general election. The measure authorizes the Secretary of State (SOS) to institute civil proceedings to enjoin any violation of the measure, unless SOS or a candidate for SOS violates the measure, in which case the Attorney General may institute civil proceedings to enjoin any violation of the measure. In any such civil action, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take any other actions as the court deems proper. A restraining order, prohibition or injunction may be issued without proof of injury or damage to any person. The circuit court shall give priority to any such hearing and determination and shall award the prevailing party reasonable attorney fees at trial and on appeal. Upon proof of a violation, the court shall impose a civil penalty of not more than \$10,000, which is the exclusive remedy for any such violation. All penalties recovered shall be paid into the State Treasury and credited to the General Fund.

The measure also clarifies that a similar prohibition in ORS 260.532, which prohibits any person from knowingly or with reckless disregard communicating a false statement of material fact about a candidate, political committee or measure, applies to electronic or telephonic communications, including advertisements circulated by electronic or telephonic means.

The measure would take effect on January 1, 2022.

Secretary of State

The fiscal impact to the Secretary of State is indeterminate. The measure authorizes SOS to institute a civil proceeding against anyone who knowingly or with reckless disregard communicates a statement of material fact that is intended to mislead voters about an election or registering to vote. The measure does not, however,

require SOS to institute such a civil proceeding; it is discretionary. If SOS were to never institute such a civil proceeding, the measure would have no fiscal impact on SOS. This fiscal impact statement assumes that SOS would institute such a proceeding.

Currently, when the SOS Elections Division receives a complaint, the division investigates the complaint pursuant to ORS 260.345. The measure would not change that process. However, if the Elections Division were to determine that someone violates the measure, the division would file a civil proceeding in a state circuit court, which the Department of Justice would litigate and/or settle on behalf of the Elections Division. The fiscal impact to SOS would depend on how many violations occur, how many complaints the Elections Division receives and investigates, how many lawsuits the division files in the circuit courts, and how long it would take to adjudicate and/or settle these cases, all of which is presently unknown.

Department of Justice

Although the Department of Justice (DOJ) does not need any additional resources at this time, the measure would have an indeterminate fiscal impact on DOJ. The DOJ Civil Enforcement Division would represent SOS in these lawsuits, for which SOS would be charged for legal services under the department's standard billable hours charge. Since SOS would have the primary enforcement role, the Civil Enforcement Division would not conduct the initial review and investigation for each case, which would lessen the impact to DOJ. It should also be noted that these cases would only occur within a discrete timeframe, i.e., during the November or May election cycles, and cases are more likely to be filed for violations relating to statewide or federal elections. DOJ estimates that it would be able to absorb as many as 10 cases per election cycle into the division's existing workload without adding additional staff. If, for some reason, the caseload was to exceed 10 cases per election cycle DOJ might need to request additional position authority at that time.

Oregon Judicial Department

The measure would have a minimal fiscal impact on the Oregon Judicial Department.

District Attorneys and their Deputies

The measure would have no fiscal impact on District Attorneys and their Deputies.

Oregon Government Ethics Commission

The measure would have no fiscal impact on the Oregon Government Ethics Commission.