

House Bill 2169

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Secretary of State Bill Bradbury)

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**.

Modifies definition of "voting machine." Allows Secretary of State to revoke approval of voting machine or vote tally system if machine or system does not comply with law.

Prohibits secretary from approving voting machine unless machine contains devices that duplicate votes cast by elector onto paper record copy and allow elector to view paper record copy.

Directs county clerks to enter ballots cast using voting machines into vote tally system.

Specifies, for ballots cast using voting machines, that paper record copy is counted as ballot to be used in recount.

A BILL FOR AN ACT

1
2 Relating to elections; creating new provisions; and amending ORS 246.012, 246.550, 246.560, 254.005,
3 254.485 and 258.211.

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

5 **SECTION 1.** ORS 246.012 is amended to read:

6 246.012. As used in this chapter:

7 (1) "Ballot" means any material on which votes may be cast for candidates or measures.

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

9 (3) "County governing body" means the county court sitting for the transaction of county busi-
10 ness or the board of county commissioners.

11 (4) "Election" means any election held within this state.

12 (5) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Consti-
13 tution.

14 (6) "Governing body" means the governing body of any subdivision of the state.

15 (7) "Local elections official" means any person who is:

16 (a) An official of any election precinct or special district or public corporation organized for
17 public purposes; and

18 (b) Authorized or required by law to perform functions in connection with elections held in the
19 election precinct or special district or public corporation organized for public purposes.

20 (8) "Measure" includes any of the following submitted to the people for their approval or re-
21 jection at an election:

22 (a) A proposed law.

23 (b) An Act or part of an Act of the Legislative Assembly.

24 (c) A revision of or amendment to the Oregon Constitution.

25 (d) Local, special or municipal legislation.

26 (e) A proposition or question.

27 (9) "Precinct" means any election precinct.

28 [(10) "Voting machine" means:]

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 *[(a) Any device which will record every vote cast on candidates and measures and which will either*
 2 *internally or externally total all votes cast on that device.]*

3 *[(b) Any device into which a ballot may be inserted and which is so designed and constructed that*
 4 *the vote for any candidate or measure may be indicated by punching or marking the ballot.]*

5 [(11)] (10) "Vote tally system" means one or more pieces of equipment necessary to examine and
 6 tally automatically the marked *[or punched]* ballots.

7 **(11) "Voting machine" means any device that will record every vote cast on candidates**
 8 **and measures and that will either internally or externally total all votes cast on that device.**

9 **SECTION 2.** ORS 246.550 is amended to read:

10 246.550. (1) The Secretary of State shall publicly examine all makes of voting machines or vote
 11 tally systems submitted to the secretary and determine whether the machines or systems comply
 12 with the requirements of ORS 246.560, and can safely be used by electors.

13 (2) Any person owning or interested in a voting machine or vote tally system may submit it to
 14 the secretary *[of State]* for examination. For the purpose of assistance in examining the machine or
 15 system the secretary *[of State]* may employ not more than three individuals who are expert in one
 16 or more of the fields of data processing, mechanical engineering and public administration. The
 17 compensation of these assistants shall be paid by the person submitting the machine or system.

18 (3) Not later than the 30th day after completing the examination *[and approval of any]*, **the**
 19 **secretary shall approve or reject the** voting machine or vote tally system. **If** the secretary *[of*
 20 *State]* **approves the machine or system, the secretary** shall make a report on the machine or
 21 system, together with a written or printed description, drawings and photographs clearly identifying
 22 the machine or system and its operation. *[The Secretary of State]* Upon request, **the secretary** shall
 23 send a copy of the report to any governing body within the state.

24 (4) Any voting machine or vote tally system *[that receives the approval of]* **approved by** the
 25 secretary *[of State]* may be used for conducting elections. *[Any]* **A** machine or system *[that does not*
 26 *receive such approval shall]* **rejected by the secretary may** not be used at any election. *[After a*
 27 *machine or system has been approved by the Secretary of State, any change in the machine or system*
 28 *that does not impair its accuracy, efficiency or capacity shall not render necessary a reexamination or*
 29 *reapproval of the machine or system]* **If a machine or system is changed after the machine or**
 30 **system has been approved by the secretary, the secretary is not required to reexamine or**
 31 **reapprove the machine or system if the secretary determines that the change does not im-**
 32 **pair the accuracy, efficiency or capacity of the machine or system.**

33 (5) **If, after consulting with county clerks, the secretary determines that a voting ma-**
 34 **chine or vote tally system approved by the secretary does not comply with the requirements**
 35 **of ORS 246.560, the secretary may revoke the approval. If the secretary revokes approval,**
 36 **the machine or system may not be used in any election.**

37 **SECTION 3.** ORS 246.560 is amended to read:

38 246.560. (1) *[No]* **A** voting machine *[shall]* **may not** be approved by the Secretary of State unless
 39 *[it]* **the voting machine** is constructed so that it:

- 40 (a) Secures to the elector secrecy of voting.
- 41 (b) Provides facilities for voting for the candidates of as many political parties or organizations
 42 as may make nominations and for or against as many measures as may be submitted.
- 43 (c) Permits the elector to vote for any person and as many persons for an office and upon any
 44 measure for which the elector has the right to vote.
- 45 (d) Permits the elector, except at a primary election, to vote for all the candidates of one party

1 or in part for the candidates of one party and in part for the candidates of one or more other parties.
 2

3 (e) Correctly records on a separate ballot the votes cast by each elector for any person and for
 4 or against any measure.

5 (f) Provides that a vote for more than one candidate cannot be cast by one single operation of
 6 the voting machine or vote tally system except for President and Vice President and electors for
 7 those offices.

8 (g) Provides that straight party pointers shall be disconnected from all candidate pointers.

9 **(h) Contains a device that will duplicate the votes cast by each elector onto a paper record copy.**
 10

11 **(i) Contains a device that will allow each elector to view the elector's paper record copy**
 12 **while preventing the elector from directly handling the paper record copy.**

13 (2) A vote tally system shall be:

14 (a) Capable of correctly counting votes on ballots on which the proper number of votes have
 15 been marked [*or punched*] for any office or measure that has been voted.

16 (b) Capable of ignoring the votes marked [*or punched*] for any office or measure [*where*] if more
 17 than the allowable number of votes have been marked [*or punched*], but shall correctly count the
 18 properly voted portions of the ballot.

19 (c) Capable of accumulating a count of the specific number of ballots tallied for a precinct, ac-
 20 cumulating total votes by candidate for each office, and accumulating total votes for and against
 21 each measure of the ballots tallied for a precinct.

22 (d) Capable of tallying votes from ballots of different political parties, from the same precinct,
 23 in a primary election.

24 (e) Capable of accommodating the procedure established under ORS 254.155.

25 (f) Capable of automatically producing precinct totals in either printed, marked, or punched
 26 form, or combinations thereof.

27 **SECTION 4.** ORS 254.005 is amended to read:

28 254.005. As used in this chapter:

29 (1) "Ballot" means any material on which votes may be cast for candidates or measures. In the
 30 case of a recall election, "ballot" includes material posted in a voting compartment or delivered to
 31 an elector by mail.

32 (2) "Ballot label" means the material containing the names of candidates or the measures to be
 33 voted on.

34 (3) "Chief elections officer" means the:

35 (a) Secretary of State, regarding a candidate for a state office or an office to be voted on in the
 36 state at large or in a congressional district, or a measure to be voted on in the state at large.

37 (b) County clerk, regarding a candidate for a county office, or a measure to be voted on in a
 38 county only.

39 (c) City clerk, auditor or recorder, regarding a candidate for a city office, or a measure to be
 40 voted on in a city only.

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

42 (5) "Elector" means an individual qualified to vote under section 2, Article II, Oregon Consti-
 43 tution.

44 (6) "Major political party" means a political party that has qualified as a major political party
 45 under ORS 248.006.

1 (7) "Measure" includes any of the following submitted to the people for their approval or re-
 2 jection at an election:

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

8 (8) "Minor political party" means a political party that has qualified as a minor political party
 9 under ORS 248.008.

10 (9) "Nonpartisan office" means the office of judge of the Supreme Court, Court of Appeals, cir-
 11 cuit court or the Oregon Tax Court, Superintendent of Public Instruction, Commissioner of the Bu-
 12 reau of Labor and Industries, any elected office of a metropolitan service district under ORS chapter
 13 268, justice of the peace, county clerk, county assessor, county surveyor, county treasurer, county
 14 judge who exercises judicial functions, sheriff, district attorney or any office designated nonpartisan
 15 by a home rule charter.

16 (10) "Prospective petition" means the information, except signatures and other identification of
 17 petition signers, required to be contained in a completed petition.

18 (11) "Regular district election" means the election held each year for the purpose of electing
 19 members of a district board as defined in ORS 255.005 (2).

20 [(12) "Voting machine" means:]

21 [(a) Any device which will record every vote cast on candidates and measures and which will either
 22 internally or externally total all votes cast on that device.]

23 [(b) Any device into which a ballot may be inserted and which is so designed and constructed that
 24 the vote for any candidate or measure may be indicated by punching or marking the ballot.]

25 [(13)] (12) "Vote tally system" means one or more pieces of equipment necessary to examine and
 26 tally automatically the marked [or punched] ballots.

27 **(13) "Voting machine" means any device that will record every vote cast on candidates
 28 and measures and that will either internally or externally total all votes cast on that device.**

29 **SECTION 5.** ORS 254.485 is amended to read:

30 254.485. (1) Ballots may be tallied by a vote tally system or by a counting board. A counting
 31 board may tally ballots at the precinct or in the office of the county clerk. In any event, the ballots
 32 shall be tallied and returned by precinct.

33 (2) If a vote tally system is used, the county clerk shall repeat the public certification test de-
 34 scribed under ORS 254.235 (1). The test shall be conducted on the date of the election and prior to
 35 beginning the tally of ballots. The test may be observed by persons described in ORS 254.235 (2).
 36 The county clerk shall certify the results of the test.

37 (3) If a vote tally system is used or if a counting board has been appointed, the tally of ballots
 38 may begin before the polls close.

39 (4) If ballots are tallied by a counting board, after the tally has begun it shall continue until
 40 completed. A counting board shall tally without adjournment and in the presence of the clerks and
 41 persons authorized to attend. However, the board may be relieved by another board if the tally is
 42 not completed after 12 hours.

43 (5) A counting board shall audibly announce the tally as it proceeds. The board shall use only
 44 pen and ink to tally.

45 **(6) For ballots cast using a voting machine, the county clerk shall:**

1 **(a) Enter the ballots cast using the machine into the vote tally system; and**

2 **(b) In the event of a recount, provide the paper record copy recorded by the machine to**
3 **the counting board.**

4 [(6)] (7) [No person] **A person** other than the county clerk, a member of a counting board or any
5 other elections official designated by the county clerk may **not** tally ballots under this chapter.

6 **SECTION 6.** ORS 258.211 is amended to read:

7 258.211. (1) The ballot boxes containing the ballots to be recounted shall be opened by the offi-
8 cial directed to make the recount only in the presence of the counting board and the persons re-
9 ferred to in this section.

10 (2) The counting board shall conduct the recount by hand and, if requested, permit:

11 (a) In the instance of a nomination or office, an affected candidate or an elector authorized in
12 writing by an affected candidate, and an elector authorized in writing by each major or minor poli-
13 tical party to be present to watch the recount.

14 (b) In the instance of a measure, one elector advocating and one elector opposing the measure
15 to be present to watch the recount.

16 **(3) For ballots cast using a voting machine:**

17 **(a) The county clerk shall deposit the paper record copy recorded by the machine into**
18 **the ballot box; and**

19 **(b) The paper record copies are the ballots to be recounted under this section.**

20 **SECTION 7.** The amendments to ORS 246.012, 246.550, 246.560, 254.005, 254.485 and 258.211
21 **by sections 1 to 6 of this 2005 Act apply to voting machines and vote tally systems approved**
22 **prior to, on or after the effective date of this 2005 Act.**

23