

**A-Engrossed**  
**House Bill 3090**

Ordered by the House May 9  
Including House Amendments dated May 9

Sponsored by Representatives KRUMMEL, THATCHER; Representatives FLORES, GREENLICK

**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.

*[Provides that ballots rejected by vote tally system may not be counted.]* **Authorizes board of election officials to duplicate ballot for purposes of counting ballot by vote tally machine. Specifies that ballot that is duplicated may be counted only once under provisions relating to conduct of elections and once in any recount.** Prohibits elections official from modifying ballot cast by elector. Directs county clerks to develop security procedures governing counting of ballots. Requires that ballots be stored in secure location.

*[Prohibits opening of return identification and secrecy envelopes in election conducted by mail until 8:30 a.m. on date of election.]* Prohibits ballot drop sites established by persons other than elections officials. **Prohibits destruction, removal, damaging or otherwise tampering with ballot drop sites. Punishes by maximum five years' imprisonment, \$125,000 fine, or both.**

Directs county clerks to provide training for persons who watch receiving and counting of votes. Specifies that ballot may not be counted as part of recount unless ballot was counted in original tally of ballots.

**Provides that nomination or election of person, or approval or rejection of measure, may be set aside in case of mistake in canvass of votes.**

**A BILL FOR AN ACT**

1  
2 Relating to elections; creating new provisions; and amending ORS 254.074, 254.482, 254.505, 258.026,  
3 258.211, 260.695 and 260.993.

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

5 **SECTION 1.** ORS 254.505 is amended to read:

6 254.505. (1) Only official ballots shall be counted.

7 (2) Any vote from which it is impossible to determine the elector's choice for the office or  
8 measure [*shall*] **may** not be counted.

9 (3) Any ballot that has a sticker or other device in violation of ORS 254.405 (2) [*shall be void*  
10 *and shall not be counted*] **is void and may not be counted.**

11 (4) **Except as provided in this subsection, a counting board clerk, other elections official**  
12 **or other person may not alter, write on or in any other way modify a ballot cast by an**  
13 **elector. Where the elector's choice for the office or measure is clear, a board of election**  
14 **officials may enhance or duplicate the ballot so that the ballot may be counted by a vote tally**  
15 **machine. The members of the board of election officials may not all be members of the same**  
16 **political party. A ballot that is duplicated may be counted only once under this chapter and**  
17 **once in any recount conducted under ORS chapter 258.**

18 (5) Counting board clerks shall disregard misspelling or abbreviations of the names of candi-  
19 dates if it can be ascertained from the ballot for whom the vote was intended.

20 [(2)] (6) When ballots are counted by counting boards, the board chairperson, using ink, imme-

**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 diately shall initial the back of the wholly or partially void ballot and write on it “Not counted  
2 for \_\_\_\_\_” (stating the office or measure). The election board shall seal the wholly void ballots  
3 in an envelope.

4 **SECTION 2.** ORS 254.074 is amended to read:

5 254.074. (1) Each county clerk shall file a county elections security plan with the Secretary of  
6 State not later than:

7 (a) January 31 of each calendar year; and

8 (b) One business day after any revision is made to the county elections security plan.

9 (2) A county elections security plan shall include, but is not limited to:

10 (a) A written security agreement entered into with any vendor handling ballots;

11 (b) Security procedures for transporting ballots;

12 (c) Security procedures at official places of deposit for ballots;

13 (d) Security procedures for processing ballots;

14 (e) Security procedures governing election observers;

15 (f) Security procedures for ballots located in county elections work areas, buildings and storage  
16 areas;

17 (g) Security procedures for vote tally systems, including computer access to vote tally systems;

18 **(h) Security procedures governing the timing, location and method of tallying ballots;** and

19 *[(h)]* (i) Post-election ballot security.

20 (3) A security plan developed and filed under this section is confidential and not subject to dis-  
21 closure under ORS 192.410 to 192.505.

22 **SECTION 3.** Section 4 of this 2005 Act is added to and made a part of ORS chapter 254.

23 **SECTION 4.** Subject to ORS 254.478, ballots received by the county clerk shall be stored  
24 in a secure location designated by the county clerk. Only persons authorized by the county  
25 clerk shall have access to the secure location.

26 **SECTION 5.** Section 6 of this 2005 Act is added to and made a part of ORS chapter 254.

27 **SECTION 6.** (1) In an election conducted by mail, a person, except an elections official  
28 in performance of duties, may not establish a place of deposit for ballots cast in the election.

29 (2) Except as provided in subsection (3) of this section, each place of deposit for ballots  
30 cast in the election designated under ORS 254.470 shall be staffed by elections officials or  
31 individuals who have received training from the county clerk. The place of deposit shall be  
32 staffed during all hours that the place of deposit is open. At places of deposit described in  
33 this subsection, the county clerk shall post a notice stating:

34 (a) The hours that the place of deposit is open; and

35 (b) That ballots deposited outside the hours the place of deposit is open are left at the  
36 elector’s own risk.

37 (3) A county clerk may establish permanent receptacles as places of deposit for ballots  
38 in an election conducted by mail. A permanent receptacle is not required to be staffed as  
39 required under subsection (2) of this section. A permanent receptacle shall be locked, secured  
40 to the ground and secure from being moved or tampered with.

41 (4) A county clerk shall maintain places of deposit for ballots in an election conducted  
42 by mail in the county as follows:

43 (a) In each election in which 35,000 or more electors in the county are eligible to vote,  
44 the county clerk shall maintain a number of places of deposit equal to at least one place of  
45 deposit for every 20,000 electors eligible to vote in the election; and

1       **(b) In each election in which fewer than 35,000 electors in the county are eligible to vote,**  
2 **the county clerk shall maintain at least one place of deposit.**

3       **(5) Only elections officials or individuals who have received training from the county**  
4 **clerk may transfer ballots from any place of deposit to the office of the county clerk or other**  
5 **secure location designated by the county clerk.**

6       **(6) A person may not destroy, remove, damage or otherwise tamper with a place of de-**  
7 **posit for ballots cast in an election conducted by mail.**

8       **SECTION 7.** ORS 260.695 is amended to read:

9       260.695. (1) *[No person shall]* **A person may not** print or circulate an imitation of the ballot or  
10 sample ballot, or a portion of the ballot or sample ballot, which contains information which will not  
11 appear, or deletes information which will appear, on the ballot or sample ballot, or that portion of  
12 the ballot or sample ballot, unless the imitation of the ballot or sample ballot, or portion of the  
13 ballot or sample ballot, contains the following statement in bold type: “NOT FOR OFFICIAL  
14 USE.” This subsection does not prohibit the printing or circulation of an imitation of a ballot which  
15 illustrates the manner in which a candidate’s name may be written in for an office.

16       (2) *[No person]* **A person may not**, within any building in which a polling place is located or,  
17 in an election conducted by mail, after the date that ballots are mailed as provided in ORS 254.470,  
18 within any building in which ballots are issued, or within 100 feet measured radially from any en-  
19 trance to the building, *[shall]* do any electioneering, including circulating any cards or hand bills,  
20 or soliciting signatures to any petition. *[No person shall]* **A person may not** do any electioneering  
21 by public address system located more than 100 feet from an entrance to the building but capable  
22 of being understood within 100 feet of the building. The electioneering need not relate to the  
23 election being conducted.

24       (3) *[No person shall]* **A person may not** obstruct an entrance of a building in which a polling  
25 place is located. In an election conducted by mail, from the date that ballots are mailed as provided  
26 in ORS 254.470 until the time designated by the county clerk for closure of the building on election  
27 day, *[no person shall]* **a person may not** obstruct an entrance of a building in which a place des-  
28 ignated for the deposit of ballots under ORS 254.470 or any voting booth maintained under ORS  
29 254.474 is located.

30       (4) *[No person shall]* **A person may not** vote or offer to vote in any election knowing the person  
31 is not entitled to vote.

32       (5) *[No person at a polling place]* **A person**, other than an election board member, *[shall]* **may**  
33 **not** deliver a ballot to an elector **at a polling place.**

34       (6) *[No]* **An** elector at a polling place *[shall]* **may not** knowingly receive a ballot from any other  
35 person than an election board member.

36       (7) *[No person shall]* **A person may not** make a false statement about the person’s inability to  
37 mark a ballot.

38       (8) *[No]* **A** person, except an elections official in performance of duties or other person providing  
39 assistance to an elector as described in ORS 254.445, *[shall]* **may not** ask a person at the polling  
40 place for whom that person intends to vote, or examine or attempt to examine the person’s ballot.

41       (9) *[No person shall]* **A person may not** show the person’s own marked or punched ballot to  
42 another person to reveal how it was marked or punched.

43       (10) *[No]* **An** elections official, other than in the performance of duties, *[shall]* **may not** disclose  
44 to any person any information by which it can be ascertained for whom any elector has voted.

45       (11) *[No]* **A** person, except an elections official in performance of duties, *[shall]* **may not** do

1 anything to a ballot to permit identification of the person who voted.

2 (12) [No] **An** elector at a polling place [shall] **may not** deliver a ballot to an election board  
3 member except the ballot the elector received from an election board member. [Nothing in this sub-  
4 section shall] **This subsection does not** prohibit a person from delivering any absentee ballot or  
5 ballots to an election board member.

6 (13) [No] **A** person at a polling place, except an election board member, [shall] **may not** receive  
7 from an elector other than an absent elector a marked or punched ballot.

8 (14) [No elector shall] **An elector may not** willfully leave in the polling place anything that will  
9 show how the elector's ballot was marked or punched. In an election conducted by mail, [no elector  
10 shall] **an elector may not** willfully leave at any place designated for the deposit of ballots under  
11 ORS 254.470 or in any voting booth maintained under ORS 254.474, anything that will show how the  
12 elector's ballot was marked or punched.

13 (15) [No] **A** person, except an elections official in performance of duties, [shall] **may not** remove  
14 a ballot from any polling place, any place designated for the deposit of ballots under ORS 254.470  
15 or any voting booth maintained under ORS 254.474.

16 (16) [No] **A** person, except an elections official in performance of duties or a person authorized  
17 by that official, [shall] **may not** willfully deface, remove, alter or destroy a posted election notice.

18 (17) [No] **A** person, except an elections official in performance of duties, [shall] **may not**  
19 willfully remove, alter or destroy election equipment or supplies, or break the seal or open any  
20 sealed package containing election supplies.

21 (18) [No] **A** person [other than], **except** an elections official [shall] **in performance of duties,**  
22 **may not** attempt to collect voted ballots within 100 feet measured radially from a location desig-  
23 nated for deposit of ballots under ORS 254.470.

24 [(19) No person, except an elections official in performance of duties, in an election conducted by  
25 mail, shall establish a location to collect ballots voted by electors unless the person prominently dis-  
26 plays at the location a sign stating: "NOT AN OFFICIAL BALLOT DROP SITE."]

27 **SECTION 8.** ORS 254.482 is amended to read:

28 254.482. (1) This section applies only to elections conducted by mail.

29 (2) After the date that ballots are mailed as provided in ORS 254.470, the county clerk, if re-  
30 quested, shall permit authorized persons to be at the office of the county clerk to watch the re-  
31 ceiving and counting of votes. The authorization shall be in writing, shall be signed by an officer  
32 or its county affiliate of a political party, a candidate or the county clerk and shall be filed with the  
33 county clerk. The county clerk shall permit only so many persons as watchers under this subsection  
34 as will not interfere with an orderly procedure at the office of the county clerk.

35 **(3) Any person authorized to watch the receiving and counting of votes under this section**  
36 **must first receive training provided by the county clerk. The county clerk shall schedule the**  
37 **training prior to any election conducted by mail. A person is not required to receive training**  
38 **under this subsection more than once in a calendar year.**

39 **SECTION 9.** ORS 258.211 is amended to read:

40 258.211. (1) The ballot boxes containing the ballots to be recounted shall be opened by the offi-  
41 cial directed to make the recount only in the presence of the counting board and the persons re-  
42 ferred to in this section.

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

44 (a) In the instance of a nomination or office, an affected candidate or an elector authorized in  
45 writing by an affected candidate, and an elector authorized in writing by each major or minor poli-

1 tical party to be present to watch the recount.

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

4 **(3) Unless ordered by a court, a ballot may not be counted in any recount conducted**  
5 **under this chapter unless the ballot was counted in the original tally of ballots for the**  
6 **measure, nomination or office conducted under ORS chapter 254. This subsection does not**  
7 **prevent the filing of a petition contesting the results of the election under this chapter.**

8 **SECTION 10.** ORS 260.993 is amended to read:

9 260.993. (1) The penalty for violation of ORS 260.532 is limited to that provided in ORS 260.532  
10 (6) and (8).

11 (2) Violation of ORS 247.125, 247.171 (5), 247.420 (2), 253.710, 260.402, 260.555, 260.558, 260.575,  
12 260.615, 260.645, 260.665 (2) or (3) involving any action described in ORS 260.665 (2)(d) to (f),  
13 260.715, [or] 260.718 **or section 6 (6) of this 2005 Act** is a Class C felony.

14 (3) Violation of ORS 260.695 (4) is a Class A misdemeanor.

15 (4) Violation of ORS 247.171 (6) is a Class C misdemeanor.

16 **SECTION 11.** ORS 258.026 is amended to read:

17 258.026. (1) The nomination or election of a person [shall] **may** not be set aside for any cause  
18 listed in ORS 258.016 (3) to (5) unless:

19 (a) The person nominated or elected had knowledge of or connived in the cause of the contest;  
20 [or]

21 (b) The number of votes taken from the person nominated or elected by reason of the cause of  
22 the contest would reduce the legal votes of the person below the number of legal votes given to  
23 another person for the same nomination or office; **or**

24 **(c) In the case of a mistake in the canvass of votes, it can be determined that the nomi-**  
25 **ination or election would have been given to one of the candidates other than the candidate**  
26 **nominated or elected if all votes not canvassed due to the mistake had been canvassed for**  
27 **the other candidate.**

28 (2) The nomination or election of a person [shall] **may** not be set aside for the cause described  
29 in ORS 258.016 (6) unless it can be determined that the nomination or election would have been  
30 given to one of the candidates other than the candidate nominated or elected if all votes not cast  
31 or tallied due to the error had been cast or tallied for the other candidate.

32 (3) The approval or rejection of a measure [shall] **may** not be set aside unless it appears that:

33 (a) The number of votes taken from the approval or rejection by reason of the contest would  
34 reverse the outcome of the election; [or]

35 (b) The outcome of the election would have been reversed if all votes not cast or tallied due to  
36 an error under ORS 258.016 (6) had been cast or tallied for approval or rejection of the measure;  
37 **or**

38 **(c) In the case of a mistake in the canvass of votes, the outcome of the election would**  
39 **have been reversed if all votes not canvassed due to the mistake had been canvassed for**  
40 **approval or rejection of the measure.**

41 **SECTION 12.** Sections 4 and 6 of this 2005 Act and the amendments to ORS 254.074,  
42 254.482, 254.505, 258.026, 258.211, 260.695 and 260.993 by sections 1, 2 and 7 to 11 of this 2005  
43 Act apply only to elections conducted on or after the effective date of this 2005 Act.