



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
April 12, 2004

Contact: Summer Davis
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on April 12, 2004, for initiative petition #1, proposing a constitutional amendment, for the General Election of November 7, 2006. In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**AMENDS CONSTITUTION: LIMITS BIENNIUM-TO-BIENNIUM CHANGES IN
LEGISLATIVE APPROPRIATIONS TO CHANGES IN INFLATION AND POPULATION
EXCLUSIVELY**

RESULT OF "YES" VOTE: "Yes" vote amends constitution to limit the change in legislative appropriations from biennium to biennium to percentage change in inflation plus percentage change in population.

RESULT OF "NO" VOTE: "No" vote retains existing statute capping appropriations on basis of personal income in Oregon; rejects amending constitution to limit appropriation changes to population, inflation changes.

SUMMARY: Amends constitution. An Oregon statute currently limits state appropriations to 8% of projected personal income in Oregon (with certain exceptions). If Governor declares emergency, legislature may exceed current statutory appropriations limit by 60% vote of each house. This measure adds constitutional provision limiting the change in legislative appropriations from one biennium to the next biennium to percentage change in inflation plus percentage change in state population over previous two years. Certain appropriations not subject to limit, including: federal, donated funds; proceeds from sales of bonds, certain real property; public-pension benefits, refunds. Measure provides that appropriations limit may be exceeded by amount approved by two-thirds of each house of legislature and approved by majority of voters voting in general election. Other provisions.

Chief Petitioner(s): Don McIntire, 929 SE Phoebe Ct, Gresham, OR 97080 and Jason Williams, PO Box 23573, Tigard, OR 97281.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.25. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, Room 141 State Capitol, Salem, OR 97310-0722.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on April 26, 2004. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2006 general election ballot is 100,840. These signatures must be filed in this office not later than July 7, 2006.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

April 12, 2004

John Lindback
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

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BILL BRADBURY
SECRETARY OF STATE

Re: Proposed Initiative Petition — Amends Constitution: Limits Biennium-To-Biennium Changes In Legislative Appropriations To Changes In Inflation And Population Exclusively
DOJ File #BT-01-04; Elections Division #1

Dear Mr. Lindback:

We have reviewed the four comments submitted on the draft ballot title for the above-referenced proposed measure. This letter summarizes the comments we received, our responses to those comments, and the reasons we changed the ballot title in response to the comments and our further review of the proposed measure. This letter should be included in the record if the Oregon Supreme Court is asked to review this ballot title.

The caption

The draft caption used the phrase “limits change in legislative spending” to describe the proposed measure’s subject matter. Commenters Kain and Terhune object to that phrase on the ground that “the caption should use the term ‘appropriations’ rather than ‘spending’ in order to be accurate.” Commenter Novick similarly objects to use of the word “spending.” We agree that the word “spending” is imprecise because the legislature generally appropriates money to state agencies, which will spend the funds, rather than spending the money itself. We have substituted the word “appropriations” for the word “spending” in the caption and have eliminated the word “spending” from other portions of the ballot title.

Based on the draft caption’s use of the term “legislative spending,” commenters Kain and Terhune also suggest that the word “legislative” should be changed to “state,” so that voters are not misled into believing that the measure is aimed at limiting, for example, “what legislators spend within their own offices.” Commenter Novick makes a similar argument. We decline to make the suggested change because the proposed

measure refers specifically to “appropriations by the Legislative Assembly,” not to “state appropriations.” In any event, any confusion that might have resulted from use of the term “legislative spending” no longer will occur because the certified caption uses the term “legislative appropriations” instead.

Commenter Novick also suggests that the caption should make clear that the proposed measure “would make population and inflation the ONLY criteria limiting appropriations” changes. Commenters Kain and Terhune make a similar argument. We agree that the draft caption did not clearly convey that aspect of the proposed limitation; we have changed the caption to add the word “exclusively” to give voters that information.

Commenter Novick also argues that the word “constitutional” should be added to the caption to help differentiate the proposed measure’s subject matter from the existing statutory limitation on appropriations. We decline to make the change, which would be repetitive, as the phrase “amends constitution” already informs voters that the measure would make a “constitutional” change.

Commenter Nesbitt focuses on the fact that the proposed measure provides that the new constitutional appropriations limit could be changed only by a two-thirds vote in both legislative houses and approval by the voters. He suggests that this “change” from the usual requirements for amending the constitution should be identified in the caption. We disagree. Information regarding how the legislature and voters could override the constitutional appropriations limit is of secondary importance and appropriately may be described only in the ballot title’s summary. In addition, adding information about that relatively minor aspect of the proposed measure would require eliminating more important information respecting the measure’s subject matter from the caption.

As certified, the caption provides:

**AMENDS CONSTITUTION: LIMITS BIENNIUM-TO-BIENNIUM
CHANGES IN LEGISLATIVE APPROPRIATIONS TO CHANGES IN
INFLATION AND POPULATION EXCLUSIVELY**

“Yes” result statement

Commenters Nesbitt and Novick suggest that the “yes” result statement should inform voters that the new appropriations limit would be constitutional, not merely statutory. We agree, and have modified the result statement accordingly.

We decline, however, to make two other changes that commenter Nesbitt suggests. First, we reject his suggestion to add information regarding the method by which the

legislature and voters could override the new constitutional appropriations limit. That information appropriately is included only in the summary, not the “yes” result statement, because it is of secondary importance and cannot be described accurately within the result statement without omitting other, more significant information. Second, we decline commenter Nesbitt’s suggestion to use the word “spending” instead of “appropriations” in the result statement. As explained above, we have concluded that the word “appropriations” is more accurate and have, therefore, eliminated the word “spending” from the ballot title.

Commenters Kain, Terhune, and Novick contend that the “yes” result statement, like the caption, should state explicitly that population and inflation changes are the *only* bases on which legislative appropriations could change from biennium to biennium under the proposed measure. We disagree. The phrasing of the “yes” result statement clearly conveys the necessary information: that the proposed measure would limit biennial changes in legislative appropriations to the percentage change in inflation plus the percentage change in population. Adding a term like the word “exclusively” would repeat information that the result statement already provides, putting inappropriate emphasis on that aspect of the proposed measure.

As certified, the “yes” result statement provides:

RESULT OF “YES” VOTE: “Yes” vote amends constitution to limit the change in legislative appropriations from biennium to biennium to percentage change in inflation plus percentage change in population.

“No” result statement

Commenters Novick, Kain, Terhune, and Nesbitt argue that the “no” result statement should describe the existing statutory limit on appropriations instead of merely stating that a “no” vote would retain some unidentified existing law. We agree, and have modified the result statement accordingly. As certified, the “no” result statement provides:

RESULT OF “NO” VOTE: “No” vote retains existing statute capping appropriations on basis of personal income in Oregon; rejects amending constitution to limit appropriation changes to population, inflation changes.

Summary

Commenter McIntyre objects to the Attorney General’s decision to describe the existing statutory appropriations limit in the summary. We decline to remove that description, which provides the voter with helpful background information. *See Sizemore*

v. Myers, 326 Or 143, 148, 950 P2d 314 (1997) (in another ballot-title proceeding, deeming “permissible” the Attorney General’s choice “to inform the voters that an existing statute already imposes certain limits upon governmental spending and, if the proposed measure is rejected, that statute will remain in effect”).

Commenter McIntyre also suggests that, if information respecting existing law is included in the summary, voters should be informed more explicitly that the existing law is statutory, while the proposed measure would place an appropriations limit in the constitution. We agree, and have modified the summary accordingly.

Commenter Nesbitt contends that the summary should explain that the proposed measure would limit both increases and *decreases* to legislative appropriations. We disagree. Although the word “change,” as included in the proposed measure, could be interpreted to mean both increases and decreases, that interpretation is not the only one that is plausible. The proposed addition to the constitution would state that the provision’s “object * * * is to control the *growth* of state government spending.” (Emphasis added.) Given that language, it is possible that a court might interpret the phrase “change in total appropriations” to refer only to increases in appropriations, not to decreases. Consequently, we would be inappropriately speculating about the proposed measure’s meaning if we stated, in the summary, that the measure would limit both increases and decreases to appropriations. Moreover, even if that is the correct interpretation of the proposed measure, that meaning is accurately captured by the phrase “change in legislative appropriations” as used in the certified summary.

Commenter Nesbitt also suggests that the procedure by which the constitutional appropriations limit could be overcome should be described in greater detail. We disagree; the certified summary accurately informs voters that both houses of the legislature *and* the voters would have to approve any change to appropriations beyond the constitutional limit.

Commenters Kain, Terhune, and Novick argue that the summary should explicitly state that “the proposal sets out the *only* factors that may be used in setting appropriation levels.” We disagree for the same reason that we rejected similar comments respecting the “yes” result statement. The summary adequately and accurately informs voters that appropriation levels could change only based on changes in population and inflation. It would be inappropriate to further emphasize that aspect of the proposed measure.

As certified, the summary provides:

SUMMARY: Amends constitution. An Oregon statute currently limits state appropriations to 8% of projected personal income in Oregon (with certain exceptions). If Governor declares emergency, legislature may

exceed current statutory appropriations limit by 60% vote of each house. This measure adds constitutional provision limiting the change in legislative appropriations from one biennium to the next biennium to percentage change in inflation plus percentage change in state population over previous two years. Certain appropriations not subject to limit, including: federal, donated funds; proceeds from sales of bonds, certain real property; public-pension benefits, refunds. Measure provides that appropriations limit may be exceeded by amount approved by two-thirds of each house of legislature and approved by majority of voters voting in general election. Other provisions.

In a separate letter, commenter Nesbitt raises the issue whether the proposed measure violates the separate amendment rule of the Oregon Constitution. That issue is beyond the scope of the ballot title drafting process. See OAR 165-14-028 (providing for separate review process by Secretary of State to determine whether measure complies with constitutional procedural requirements for proposed initiative measures).

Sincerely,

Erika L. Hadlock
Assistant Attorney General

ELH:mlk/APP65767

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BALLOT TITLE

**AMENDS CONSTITUTION: LIMITS BIENNIUM-TO-BIENNIUM
CHANGES IN LEGISLATIVE APPROPRIATIONS TO CHANGES IN
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