



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
February 11, 2005

Contact: Carla Corbin
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on February 11, 2005, for initiative petition #22, proposing a statutory 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:

ELIMINATES TEACHER SENIORITY AS A FACTOR WHEN A LOCAL SCHOOL DISTRICT REDUCES TEACHING STAFF

RESULT OF "YES" VOTE: "Yes" vote eliminates the use of teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

RESULT OF "NO" VOTE: "No" vote retains the existing system of utilizing teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

SUMMARY: Under current law, when a local school district reduces its teacher staff, seniority is used as a factor in determining which teachers are to be retained. Currently, local school districts must determine the seniority of teachers eligible to be retained; seniority is calculated from the first day of actual service as a teacher with the district, including approved leaves of absence. If a school district desires to retain a teacher who has less seniority than a teacher being released, the district must determine that the teacher to be retained is more qualified. The measure requires that teachers be retained based solely on their qualifications, and eliminates the use of seniority as a factor in making these decisions. Collective bargaining agreements must comply. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004 and Grace I. Sizemore, PO Box 66921, Portland, OR 97290.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.50. 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 February 28, 2005. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2006 general election ballot is 75,630. These signatures must be filed in this office not later than July 7, 2006.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

February 11, 2005

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

Re: Proposed Initiative Petition — Eliminates Teacher Seniority As A Factor When A Local School District Reduces Teaching Staff
DOJ File #BT-22-05; Elections Division #22

Dear Mr. Lindback:

Pursuant to ORS 250.067, we have reviewed the comments submitted by Margaret Olney on behalf of Kris Kain and Chip Terhune and those submitted by Bill Sizemore. In response to those comments and further review of the proposed measure, we have modified one of the result statements.

This letter summarizes the comments we received and our response to those comments. ORAP 11.30(7) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews this ballot title.

Legal Standards

ORS 250.035(2)(a) requires, in the case of a ballot measure to be initiated or referred, a caption of not more than 15 words that “reasonably identifies the subject matter” of the measure. ORS 250.035(2)(b) and (c) require “a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved” and “a simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.” Those statements “shall be written so that, to the extent practical, the language of the two statements is parallel.” ORS 250.035(3). The summary for a state measure must summarize the measure and its major effect in 125 or fewer words. ORS 250.035(2)(d).

The Caption

The draft ballot title included the following caption:

ELIMINATES TEACHER SENIORITY AS A FACTOR WHEN A LOCAL SCHOOL DISTRICT REDUCES TEACHING STAFF

Commenters Kain and Terhune object to three different aspects of the draft caption. First, they argue that the proposed ballot measure does not just eliminate consideration of seniority, it actively prohibits a school district from considering seniority. Second, they note that the caption does not identify local school boards as the decision-makers affected by the measure. Third, and finally, they express a concern that the term "seniority" is not defined. They propose to define the term in the caption.

This measure is an amendment to an existing statute that requires consideration of seniority, except where a school district desires to retain a teacher with less seniority. Therefore, we believe that the use of the word "eliminates" best describes what the measure does: It removes the use of seniority from an existing mechanism. We believe it is apparent from this wording that the use of seniority is prohibited by the measure; however, the use of the word "prohibit" would not communicate how the change is being accomplished. We decline to amend our proposed caption in that fashion.

We also believe it is reasonably obvious from the draft caption that local school boards are the parties whose decisions are affected. The draft caption refers to district. To make this even more clear, we have employed "local" as a modifier in describing the school district. Seniority is a term that we believe is reasonably well understood, and we do not believe it necessary to include a definition of that term in the caption.

Accordingly, we certify the following caption:

ELIMINATES TEACHER SENIORITY AS A FACTOR WHEN A LOCAL SCHOOL DISTRICT REDUCES TEACHING STAFF

The Results Statements

The draft results statements prepared by this office were as follows:

RESULT OF "YES" VOTE: "Yes" vote eliminates the existing system of utilizing teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

RESULT OF A "NO" VOTE: "No" vote retains the existing system of utilizing teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

Kain and Terhune object to the "yes" statement, reiterating their objection concerning the use of "eliminates." They contend that the draft "yes" vote statement fails to accurately convey what occurs as the result of a "yes" vote. They also object to the "no" vote statement, arguing that it provides the voters with little useful additional information.

Commenter Sizemore objects to the use of the phrase "eliminating the existing system," when only seniority would be eliminated. We agree that this phrase might cause confusion and have thus modified it.

Accordingly, we certify the following results statements:

RESULT OF A YES VOTE: "Yes" vote eliminates the use of teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

RESULT OF A "NO" VOTE: "No" vote retains the existing system of utilizing teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

Kain and Terhune object to the draft summary, which was as follows:

SUMMARY: Under current law, when a local school district reduces its teacher staff, seniority is used as a factor in determining which teachers are to be retained. Currently, local school districts must determine the seniority of teachers eligible to be retained; seniority is calculated from the first day of actual service as a teacher with the district, including approved leaves of absence. If a school district desires to retain a teacher who has less seniority than a teacher being released, district must determine that the teacher to be retained has more competence or merit. Measure requires that teachers be retained based solely on merit and competence, and bars the use of seniority as a factor in making these decisions. Collective bargaining agreements must comply. Other provisions.

Kain and Terhune specifically object to the definition of seniority and argue that "seniority" must be accompanied by a clear definition. With regard to the definition of seniority, we have incorporated the language of the statutory definition, ORS 342.942(3)(b), which is eliminated by this measure, into the summary. We thus decline to adopt their proposed language. Their proposed summary also includes a sentence stating that "school districts cannot waive the right to consider competence. Because that fact is clear in the draft summary, we decline to address their comments.

Commenter Sizemore contends that, under the existing statutory system, school districts can agree to "contracts that make seniority the primary or only factor in determining retention." ORS 342.934(8), however, provides that

After August 15, 1997, a school district shall not agree in any collective bargaining agreement to waive the right to consider competence in making decisions about the order or reduction in staff or recall of staff.

Current law thus prohibits a district from waiving the right to consider competence. We therefore decline to include Mr. Sizemore's comments about seniority.

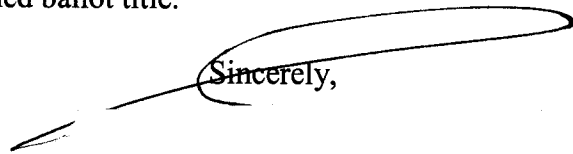
Accordingly, we certify the following summary:

SUMMARY: Under current law, when a local school district reduces its teacher staff, seniority is used as a factor in determining which teachers are to be retained. Currently, local school districts must determine the seniority of teachers eligible to be retained; seniority is calculated from the first day of actual service as a teacher with the district, including approved leaves of absence. If a school district desires to retain a teacher who has less seniority than a teacher being released, the district must determine that the teacher to be retained is more qualified. The measure requires that teachers be retained based solely on their qualifications, and eliminates the use of seniority as a factor in making these decisions. Collective bargaining agreements must comply. Other provisions.

We believe that the Certified Ballot Title Summary, as amended, complies with the statutory requirement for a "concise and impartial statement * * * summarizing the measure and its major effect." ORS 250.035(2)(d).

Conclusion

For the reasons discussed above, we have modified the draft ballot title. Pursuant to ORS 250.067(2), we certify the attached ballot title.

 Sincerely,

Elizabeth A. Gordon
Senior Assistant Attorney General

EAG:mlk/APP76697

Enclosure

c: Peter Shepherd, Deputy Attorney General
Don Arnold, General Counsel Division
Steve Wolf, General Counsel Division

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BALLOT TITLE

ELIMINATES TEACHER SENIORITY AS A FACTOR WHEN A LOCAL SCHOOL DISTRICT REDUCES TEACHING STAFF

RESULT OF "YES" VOTE: "Yes" vote eliminates the use of teacher seniority as a factor in decisions when a local school district reduces its teaching staff.

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