



# OFFICE OF THE SECRETARY OF STATE

## NEWS RELEASE

**BILL BRADBURY**

**For Immediate Release:**  
March 22, 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 March 21, 2005, for initiative petition #30, 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:

**PROHIBITS TAXES ON INTERNET ACCESS/INTERNET ACCESS USE BY  
STATE, CITIES, COUNTIES, OTHER POLITICAL SUBDIVISIONS**

**RESULT OF "YES" VOTE:** "Yes" vote prohibits taxes on Internet access/Internet access use; repeals exception in current law for taxes that were in effect on October 6, 2001.

**RESULT OF "NO" VOTE:** "No" vote retains current law allowing taxes on Internet access and use of Internet access if the taxes were in effect on October 6, 2001.

**SUMMARY:** Current law prohibits state, cities, counties, and other political subdivisions from taxing Internet access or the use of Internet access if the tax was not in effect on October 6, 2001. Beginning January 2, 2007, measure prohibits state, cities, counties, and other political subdivisions from imposing, assessing, collecting, or attempting to collect a "tax" (defined) on "Internet access" (defined) or the use of Internet access. Measure defines "Internet," "Internet access," and "Tax," using definitions from current law. Measure supercedes any conflicting laws or "other enforceable government action." Measure repeals the existing exception for taxes in effect October 6, 2001. Measure reduces potential revenue for state, cities, counties, or other political subdivisions with tax in effect on October 6, 2001; provides no replacement revenue. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004.

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 4, 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.

# # #



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

March 21, 2005

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

BILL BRADBURY  
SECRETARY OF THE STATE

2005 MAR 21 PM 1:40

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Re: Proposed Initiative Petition — Prohibits Taxes On Internet Access/Internet Access  
Use By State, Cities, Counties, Other Political Subdivisions  
DOJ File #BT-30-05; Elections Division #30

Dear Mr. Lindback:

Pursuant to ORS 250.067, we have reviewed the comments submitted in response to the draft ballot title for the above-referenced initiative petition. We provide the enclosed certified ballot title, reflecting the changes to each of its parts.

We received one comment letter, submitted by Margaret S. Olney on behalf of Commentors Kris Kain and Chip Terhune. This letter summarizes the comments we received, our responses to those comments, and the reasons we declined to make some of the proposed changes. 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.

**A. The caption**

The draft ballot title included the following caption:

**PROHIBITS INTERNET AND INTERNET ACCESS TAXES  
IMPOSED BY STATE, CITIES, COUNTIES, AND OTHER  
POLITICAL SUBDIVISIONS**

Commentors raise three issues with respect to the draft ballot title: First, they suggest that the caption's reference to "internet" is confusing because it "suggests that the ban is broader than it is." Commentators are concerned that "voters might be misled into believing that the measure is about taxing internet sales, which is clearly not the case." We believe that this comment is well taken, and we modify the caption to include a reference to "internet access use" as opposed to simply "internet."

Second, commentors suggest that the “caption should refer to both ‘internet access’ and ‘use of internet access.’” Commentors are correct that the proposed measure prohibits taxes on “internet access or the use of internet access.” Accordingly, the caption is modified to clarify that the measure prohibits taxes on “internet access/internet access use.”

Third, commentors suggest that “the caption should make clear that the proposal bans taxes *of any kind* on internet access or use of internet access.” (Emphasis in original). Commentors’ suggested alternative caption includes the phrase “of any kind,” to reflect this proposed emphasis. Although commentors’ proposed change accurately reflects the wording of the measure, we do not believe that inclusion of the phrase “of any kind” is required to understand the proposed measure. The tax ban is relatively broad because the language of the measure does not contain any exceptions or limitations, not because of the phrase “of any kind.” The modified caption accurately states that “internet access use” and “internet access” taxes are prohibited.

Although not raised as a formal comment, commentors’ proposed alternative caption raises a fourth issue. Commentors propose the following caption: **“PROHIBITS STATE, LOCAL TAXES OF ANY KIND ON INTERNET ACCESS SERVICES, USE OF INTERENT ACCESS.”** Notably, this proposed caption substitutes the word “local” in place of the words “cities, counties, other political subdivisions,” in the certified caption set out below. Elsewhere in their letter, commentors state that the phrase “state, cities, counties and other political subdivisions” could be more simply described as “state and local governments.”

Although “local” may accurately describe “cities” and “counties,” it may not fully capture the breadth of the phrase “other political subdivisions.” The term “other political subdivisions” includes regional governments, school districts, transit districts, fire districts, and other similar entities. Word limitations may, at times, require a ballot title to substitute the phrase “local governments” for “cities, counties and other political subdivisions.” Here, however, the specific terms of the measure – “cities, counties and other political subdivisions” – provide the best explanation and most accurate description of the measure. Therefore, we decline commentors’ implicit suggestion to use “local” as short-hand throughout this ballot title.

We certify the following caption:

**PROHIBITS TAXES ON INTERNET ACCESS/INTERNET ACCESS  
USE BY STATE, CITIES, COUNTIES, OTHER POLITICAL  
SUBDIVISIONS**

**B. The result statements**

The draft ballot title contained the following result statements:

**RESULT OF "YES" VOTE:** "Yes" vote prohibits taxes on Internet and Internet access and repeals exception in current law for taxes that were in effect on October 6, 2001.

**RESULT OF "NO" VOTE:** "No" vote retains current law allowing taxes on Internet access and use of Internet access if the taxes were in effect on October 6, 2001.

**1. "Yes" statement**

Commentors suggest that the "yes" statement is deficient for many of the same reasons as the caption was. Commentors first state that the "yes" statement should include the phrase "of any kind." We reject that suggestion for the reasons set forth above. Commentors also suggest that the "yes" statement's reference to "internet" and "internet access," without any reference to "use of internet access," will pose the same problems here as it did in the caption. For the reasons noted above, we agree with commentors and modify the "yes" statement to include a reference to "internet access use" instead of simply "internet."

Commentors also disagree with the use of the word "repeal" in the "yes" statement. They state that "the reference to repealing laws in effect is inappropriate unless there are actually taxes that are being collected." We disagree. The draft "yes" statement provides that the measure "repeals *exception in current law \* \* \**" (Emphasis added). Commentors' point may have been well taken if the statement read "repeals *taxes in current law*," but it does not. The certified "yes" statement, below, accurately describes the effect of the measure's passage.

We certify the following "yes" statement:

**RESULT OF "YES" VOTE:** "Yes" vote prohibits taxes on Internet access/Internet access use; repeals exception in current law for taxes that were in effect on October 6, 2001.

**2. "No" statement**

Regarding the "no" statement, commentors suggest that the statement needs to make clear that current law bans taxes on internet access and use of internet access. Commentors suggest two alternative "no" statements: (1) "No" vote retains current law

banning taxes on internet access, use of internet access, except for those taxes, if any, in effect in October 2001,” and (2) “‘No’ vote does not change current law banning state or local government tax on internet access services or use of internet access.”

The references to the current law “banning” certain taxes in both alternative proposals, although technically accurate, do not provide a clear statement of current law as it relates to the proposed measure. The proposed measure merely repeals an exception to the general ban on internet access and internet access use taxes. It does not otherwise alter the general ban on such taxes; therefore, emphasizing – in the “no” statement – that current law bans such taxes would have the effect of misleading the voters as to the scope of the proposed measure.

Additionally, we specifically reject the first proposed “no” statement because it is inaccurate. The exception in current law applies only to taxes that were in place on a specific date – October 6, 2001 – not any taxes that were in effect in October 2001. If a tax was not imposed until October 31, 2001, it would not meet the requirements of the exception in current law; commentators’ proposed “no” statement inaccurately suggests that it would.

We make no changes to the draft “no” statement, and we certify the following “no” statement:

**RESULT OF “NO” VOTE:** “No” vote retains current law allowing taxes on Internet access and use of Internet access if the taxes were in effect on October 6, 2001.

### C. Summary

The draft ballot title contained the following summary:

**SUMMARY:** Current law prohibits state, cities, counties, and other political subdivisions from taxing Internet access or the use of Internet access if the tax was not in effect on October 6, 2001. Beginning January 2, 2007, measure prohibits state, cities, counties, and other political subdivisions from imposing, assessing, collecting, or attempting to collect a “tax” (defined) on “Internet access” (defined) or the use of Internet access. Measure defines “Internet,” “Internet access,” and “Tax,” using definitions from current law. Measure supercedes any conflicting laws or “other enforceable government action.” Measure repeals the existing exceptions for taxes in effect October 6, 2001. Measure reduces potential revenue for state, cities, counties, or other political subdivisions with tax in effect on October 6, 2001; provides no replacement revenue. Other provisions.

Commentors raise a number of issues with the draft summary. First, they assert that “by quoting the text of the proposal itself, the summary fails to give voters a ‘simple and understandable’ summary.” Commentors do not, however, identify any particular language in the proposed summary that fails the “simple and understandable” summary requirement. Accordingly, we make no modifications based on this assertion.

Commentors next argue that the summary should not contain any references “to the repeal of existing taxes unless, in fact, there are current taxes on the books that are being collected.” This comment mirrors the related comment about the word “repeals” in the “yes” statement. For the reasons addressed above, we reject this comment.

Finally, commentors suggest providing a clearer definition of “internet access.” According to commentors, “[t]his point is particularly crucial in order to avoid any confusion over whether this proposal is about taxing internet commerce (*i.e.* a sales tax on internet transactions).” Commentors’ proposed summary includes the following sentence, in this regard: “Measure defines ‘internet access’ to mean any service that give users access to the internet; does not include telecommunications or cable services.”

Although commentors’ suggested change provides an accurate statement about the definition of “internet access,” we nonetheless reject it. In order to have enough available words to add their proposed definition sentence, commentors refer to “cities, counties, and other political subdivisions” as “local governments.” As addressed above, we reject this short-hand description. Without substituting “local governments” throughout the summary, there are not enough available words to include commentors’ proposed sentence. *See* ORS 250.035(2)(d) (limiting available words in summary to 125). Because the definition of “internet access” is not changed by the measure, we believe that it is more important to provide a thorough and accurate description of the types of government bodies affected by the measure.

Moreover, we believe that the use of the phrases “internet access” and “use of internet access” throughout the summary provide adequate notice to the voters that the measure does not relate to taxes on commerce conducted over the internet. That, coupled with the accepted changes to the caption and “yes” statement, is adequate to avoid any potential confusion about the meaning of “internet access” and the effect of the measure.

Finally, we believe that one minor change to the summary, not suggested by commentors, is in order. The draft summary provides that, “[m]easure repeals the existing *exceptions* for taxes in effect October 6, 2001.” (Emphasis added). Current law provides only one exception for taxes in effect on October 6, 2001; therefore, that sentence should read: “Measure repeals existing exception for taxes in effect October 6, 2001.”

We certify the following summary:

**SUMMARY:** Current law prohibits state, cities, counties, and other political subdivisions from taxing Internet access or the use of Internet access if the tax was not in effect on October 6, 2001. Beginning January 2, 2007, measure prohibits state, cities, counties, and other political subdivisions from imposing, assessing, collecting, or attempting to collect a "tax" (defined) on "Internet access" (defined) or the use of Internet access. Measure defines "Internet," "Internet access," and "Tax," using definitions from current law. Measure supercedes any conflicting laws or "other enforceable government action." Measure repeals the existing exception for taxes in effect October 6, 2001. Measure reduces potential revenue for state, cities, counties, or other political subdivisions with tax in effect on October 6, 2001; provides no replacement revenue. Other provisions.

**D. Conclusion**

For the foregoing reasons, we have made changes to the draft ballot title. We certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,

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Paul L. Smith  
Assistant Attorney General

PLS:mlk/APP77847

Enclosure

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

Bill Sizemore  
P.O. Box 343  
Beavercreek, Oregon 97004

Margaret S. Olney  
Smith, Diamond & Olney  
1500 NE Irving Street, Suite 370  
Portland, Oregon 97232

**BALLOT TITLE**

**PROHIBITS TAXES ON INTERNET ACCESS/INTERNET ACCESS USE  
BY STATE, CITIES, COUNTIES, OTHER POLITICAL SUBDIVISIONS**

**RESULT OF "YES" VOTE:** "Yes" vote prohibits taxes on Internet access/Internet access use; repeals exception in current law for taxes that were in effect on October 6, 2001.

**RESULT OF "NO" VOTE:** "No" vote retains current law allowing taxes on Internet access and use of Internet access if the taxes were in effect on October 6, 2001.

**SUMMARY:** Current law prohibits state, cities, counties, and other political subdivisions from taxing Internet access or the use of Internet access if the tax was not in effect on October 6, 2001. Beginning January 2, 2007, measure prohibits state, cities, counties, and other political subdivisions from imposing, assessing, collecting, or attempting to collect a "tax" (defined) on "Internet access" (defined) or the use of Internet access. Measure defines "Internet," "Internet access," and "Tax," using definitions from current law. Measure supercedes any conflicting laws or "other enforceable government action." Measure repeals the existing exception for taxes in effect October 6, 2001. Measure reduces potential revenue for state, cities, counties, or other political subdivisions with tax in effect on October 6, 2001; provides no replacement revenue. Other provisions.

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