

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED

09/15/2022 3:16 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Defines terms to implement HB3021 and rules requiring translation of voters' pamphlets.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/09/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Bob Roberts
503-986-1518
elections.sos@sos.oregon.gov

Public Service Building
255 Capitol St NE Suite 126
Salem, OR 97310

Filed By:
Bob Roberts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/08/2022

TIME: 2:00 PM - 2:30 PM

OFFICER: Bob Roberts

ADDRESS: Public Service Building
255 Capitol Street NE, Suite 126
Salem, OR 97310

SPECIAL INSTRUCTIONS:

The hearing will be held virtually via Microsoft Teams. A link to the hearing will be available on the Agency's website.

NEED FOR THE RULE(S)

In enacting HB3021 (2021) the Legislative Assembly directed the Secretary of State to adopt rules to implement translation activities. This rule is needed to define the terminology of implementation in time for the 2022 General Election.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB3021 (2021) available online at oregonlegislature.gov or from the Secretary of State Elections Division.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule promotes racial equity. HB3021 include requirements for the Secretary of State to ensure that each state voters' pamphlet and each county voters' pamphlet be translated from English into the most common languages of the state and of each county. Translations of voters' pamphlets promote racial equity by providing the 200,000+ persons in Oregon who have a limited ability to read, speak, write, or understand English with access to voter information and to fully exercise their voting rights.

FISCAL AND ECONOMIC IMPACT:

These proposed rules may cause minimal fiscal or economic impact to state agencies, or the public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There may be a minimal fiscal impact for the State Elections Division to answer questions regarding compliance with this rule, or for other unanticipated reasons. The cost of the Secretary of State to comply with this rule including the cost of professional services is estimated at \$683,603 during the first biennium. After the first biennium's implementation the cost will be reduced.

Although there is a small stipend for members of the public who serve as Council members and they may receive reimbursement of eligible travel expenses, there may be a minimal fiscal impact for members to prepare for and attend council meetings to comply with this rule.

(2)(a)-(c) It is not expected that these rules will impact small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

They were not, as this rule does not directly affect small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The fiscal impact of the proposed amendments is expected to be minimal at most.

ADOPT: 165-024-0005

RULE SUMMARY: HB 3021 (2021) created provisions codified in ORS Chapter 251 requiring the Secretary of State to adopt rules necessary for implementing the translation of voters' pamphlets, including using the best available and appropriate data to determine and publish the lists of most commonly spoken languages in Oregon, coordinating with county and state election officials to produce professionally translated pamphlets in multiple languages, accepting and reviewing candidate's and filers' translated candidate statements and measure arguments, establishing and consulting with a Translation Advisory Council, and translating and posting pamphlets for all elections beginning with the 2022 General Election. This rule explains the definitions the Secretary of State will use to fulfill the law and related rules, OAR 165-024-0005 to OAR 165-024-0030.

CHANGES TO RULE:

165-024-0005

Definitions

(1) The following definitions apply for purposes of OAR 165-024-0005 to OAR 165-024-0030.¶

(2) Candidate Filer means a candidate or a candidate's agent. ¶

(3) Candidate's agent means a person who has actual oral or written authority, either express or implied, to make or authorize the filing of translated statements on behalf of the candidate. ¶

(4) Community Validation means obtaining recommendations from a range of culturally and linguistically diverse communities to ensure that translated materials meet the information needs of the intended audience in a culturally and linguistically responsive way.¶

(5) Council means the Translation Advisory Council.¶

(6) The County List of Languages means the sum of the following:¶

(a) the Top Five Languages in the state of Oregon; and¶

(b) all of the Top Five Languages in the county that are the primary language for at least 100 people with Limited English Proficiency in the county; and ¶

- (c) any language that previously appeared on the Top Five Languages list for the county, if the language remains the primary language for at least 100 people in the county who have Limited English Proficiency; and¶
- (d) if none of the Top Five Languages in the county is the primary language for at least 100 people with Limited English Proficiency in the county, then the Most Commonly Spoken Language in the county.¶
- (7) County Voters' Pamphlet means a written document mailed at the direction of a county elections official to county residents for the purpose of providing any of the information described in OAR 165-024-0025.¶
- (8) Culturally responsive means identifying, nurturing, and using community customs, norms, and values, usually through direct experience in a culture, and appropriately expressing and reflecting those to meet the intended audience's needs.¶
- (9) Language(s) means languages other than English.¶
- (10) Limited English Proficiency means that a person does not speak English as their primary language and has a limited ability to read, speak, write, or understand English.¶
- (11) Local Ballot Measure Information means the local government ballot title, explanatory statements and statements created by state, local and special government bodies.¶
- (12) The Most Commonly Spoken Language(s) in a state or county means the primary language(s) for the most people in the state or county who have Limited English Proficiency.¶
- (13) Plain Language means written communication that the intended audience can understand the first time they read it.¶
- (14) Selected Voters' Pamphlet Material means the portions of the state and county voters' pamphlets that this rule requires the Secretary of State to have translated and post online.¶
- (15) State List of Languages means the sum of the following:¶
- (a) the Top Five Languages in the state of Oregon; and¶
- (b) the Top Five Languages in any county in Oregon, and¶
- (c) any language that previously appeared in a Top Five Languages list for any county in Oregon, and ¶
- (d) if none of the Top Five Languages in a county is the primary language for at least 100 people with Limited English Proficiency in the county, then the Most Commonly Spoken Language in that county.¶
- (16) Top Five Languages means the five Most Commonly Spoken Languages in the state or county, as appropriate.¶
- (17) Translate or translation means transferring written text accurately from one language into another to convey and retain the original meaning in an equivalent and culturally and linguistically responsive manner for the community being served. ¶
- (a) Translations of written statements are distinct from interpretation of spoken statements. ¶
- (b) The community to be served by a translation of voters' pamphlet material is the community of people in Oregon who have Limited English Proficiency and who speak the language as their primary language.
- Statutory/Other Authority: HB3021, ORS 247.005, ORS 246.150, ORS 251.026, ORS 251.167, ORS 251.170, ORS 251.173, ORS 251.315
- Statutes/Other Implemented: ORS 251.026, ORS 251.167, ORS 251.170, ORS 251.173, ORS 251.315