
C.R.S. TITLE 32, ARTICLE 1 SPECIAL DISTRICTS



2008 ELECTION MANUAL

Department of Local Affairs
Division of Local Government
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(303) 866-2156

<http://dola.colorado.gov/elections/>

PREFACE

The Division of Local Government in the Department of Local Affairs, no later than January 15 in even-numbered years, shall transmit to the designated election official of each special district organized under C.R.S. Title 32, Article 1, entitled to hold elections, or if there is no designated election official, to the chief executive officer of the special district, at least one copy of the election laws. (CRS 1-1-108)

The **2008 Special District Election Manual** ensures that each district has the information needed to conduct or properly cancel its May 6, 2008 regular biennial election. The provision of this manual, however, is not to be construed as legal advice. For efficiency, only those portions of statute that relate to nonpartisan elections have been included.

As you will see, the manual contains much more information than election law. The manual is divided into multiple sections and includes an **Election Calendar; CRS Title 1, Article 1-13 of the Uniform Election Code of 1992; CRS Title 32, Article 1, Parts 8 & 9; CRS Title 1, Article 45, Fair Campaign Practices Act; the Colorado Secretary of State Election & Campaign Finance Rules; Sample Election Forms and Department Contact Data.** The entire manual is available at <http://dola.colorado.gov/elections/>.

The **Election Calendar** provides an overall timeline of the election and can serve as a guide for proceeding through the entire process. The calendar includes the deadline by which a specific task is to be completed, the related statute, the page number of the associated form or sample document, and reminders of an upcoming project. You may discover that this is your most valuable tool as you plan, prepare, and implement your election.

You will find the **Secretary of State (SOS) Rules** a very useful (and necessary) tool. SOS Rules are to be used in conjunction with the election laws to insure that your election is compliant and efficient. The Secretary of State is legally authorized to promulgate election rules that, in addition to the statutes, set the guidelines for the running of legal elections.

There are a multitude of **Forms and Sample Documents** that can aid a designated election official in meeting a district's statutory requirements. Procedural instructions have been included at the bottom of many of the forms for your convenience. The Division of Local Government develops sample forms as a convenience to special districts. The sample forms were written using relevant statutory citations, rules, and guidance from other election professionals. Districts are encouraged to use the provided forms. However, no district is **required** to use all of these forms. However, a district wanting to develop its own forms may wish to consult with legal counsel.

Staff in the Division of Local Government is available to provide technical assistance throughout the election process. In addition, DLG staff will be available on Election Day, Tuesday, May 6, 2008 from 7:00 AM to 7:00 PM to offer districts phone support. Please call (303) 866-2156 if you have any questions or concerns.

In addition to this *manual*, the division has created a *listserv* for special district officials. Please go to the election website and sign up for our email notification program. The election *website* offers special district officials links to important data, revised statute and rules, as well as updated forms. For more details, please visit us at <http://dola.colorado.gov/elections/>.



C.R.S. TITLE 32, ARTICLE 1 SPECIAL DISTRICTS MAY 6, 2008 REGULAR BIENNIAL ELECTION CALENDAR

Forms and sample documents are identified as "A-#'s or B-#'s" and are available at the Division of Local Government's Election webpage [DLG Election Page](http://dola.colorado.gov/elections/).
<http://dola.colorado.gov/elections/>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
Fall 2007 AS SOON AS POSSIBLE	<p>Budgeting for Election Costs Every Title 32, Article 1 Special District will either conduct an election or legally cancel an election on May 6, 2008. Please prepare for the possibility of an election or cancellation of an election by budgeting sufficient district dollars.</p> <p>Election Resolution & Selection of Designated Election Official All powers and authority granted to the governing body of a special district may be exercised by an election official designated by the board. Your board may designate someone to be the designated election official (DEO) and also give them authority to run the election. The board, by resolution, should decide whether to hold a mail ballot election or polling place election and should list all the details of the election. CRS 1-1-111(2); 32-1-804(2); SOS Election Rule 40</p> <p>Notes: When choosing a DEO, the appointee should not be a board member if that member is also up for election because of a possible conflict of interest. The board may select an experienced and non-biased person to act as DEO, whenever possible. The division <i>recommends</i> the board officially appoint a DEO and have that appointee sign an oath of office. The election resolution, appointment, and oath of the DEO should be kept on file as part of the district's official election records.</p> <p>Form of Election Once your board determines what questions will be submitted to the electorate (e.g. candidates only, TABOR, or removal of term limits) then the form of election must be chosen. If the board chooses to hold an election by <u>Mail Ballot</u>, and wishes to coordinate with the county clerk and recorder, it is recommended that you call the official now. Alternately, if the board chooses to hold a <u>Polling Place</u> election, you should begin securing ADA accessible polling sites as soon as possible.</p> <p>Remember, a ballot issue (TABOR) election that is not part of an organizational election shall be conducted either as part of a coordinated election or in accordance with the provisions of the "<u>Mail Ballot</u> Election Act", article 7.5 of title 1, CRS. CRS 32-1-805 (2)</p>	<p>B-1</p> <p>B-3 THRU B-4</p> <p>B-5</p> <p>Election Website</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>NEW January 1</p>	<p>Mail-In Ballot Applications (Formerly Absentee) Earliest day to apply for a mail-in ballot. CRS 1-8-104(3); 1-8-107; SOS Election Rule 13</p> <p>Permanent Mail-In Voter Status Any eligible elector may apply for permanent mail-in voter status. The application for permanent mail-in voter status shall be made in writing or by facsimile using an application furnished by the DEO or in the form of a letter. CRS 1-8-104.5</p> <p>Note: It is recommended districts use the state's approved mail-in application form and forward it by facsimile to the appropriate county clerk & recorder. Ask your county clerk and recorder to provide mail-in status as part of your voter registration lists. If this is possible, you can honor your electorate's wishes to receive all ballots by mail and keep them from having to apply for a mail ballot in both political subdivisions.</p>	<p>B-2</p>
<p>TICKLE January 7</p>	<p>Prepare for "Call for Nominations" Publication February 6 through the 21st are the dates in which a special district shall provide notice by publication of a call for nominations for the election. The division recommends calling your newspaper, to learn about the paper's requirements to publish a notice, 3-4 weeks before your deadline.</p>	<p>B-6</p>
<p>TICKLE February 6</p>	<p>CPF Contact Data The DEO should call their county clerk and recorder. You will need to know who the official contact person is for Campaign & Political Finance (CPF) purposes. Obtain the clerk's facsimile number so that you may forward copies of the self-nomination and acceptance forms and the affidavits of intent to be a write-in candidate to them. Your candidates will need the CPF official's contact name and telephone number for future reference. (Insert the contact data into the CPF Memorandum that you will be providing to district candidates.)</p>	<p>A-2 THRU A-5 B-7 B-8</p>
<p>February 6 - February 21</p>	<p>Call for Nominations - Candidates for Board of Director Not less than 75 days nor more than 90 days before a regular special district election, the designated election official shall provide notice by publication of a call for nominations for the election. CRS 32-1-804.1</p> <p>"Publication" means printing one time, in one newspaper of general circulation in the special district if there is such a newspaper, and, if not, then in a newspaper in the county in which the special district is located. For a special district with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the special district, then one publication is required in a newspaper in each county in which the special district is located and in which the special district also has fifty or more eligible electors. CRS 1-1-104(34)</p>	<p>B-6</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>NEW February 29</p>	<p>Self-Nomination and Acceptance - Candidates for Director Not less than 67 days before the date of the regular special district election, any person who desires to be a candidate for the office of a special district director shall file a self-nomination and acceptance form or letter signed by the candidate and by a registered elector as a witness to the signature of the candidate. The self-nomination form or letter shall be filed with the designated election official or, if none has been designated, the presiding officer or the secretary of the board of directors of the special district in which the election will be held. The designated election official will notify the candidate if the petition is not sufficient. Self-nomination and acceptance forms may be amended once at any time prior to 3:00 p.m. on the 67th day before the election, if it is deemed not sufficient. CRS 32-1-804.3</p> <p>Campaign & Political Finance (CPF) Memorandum to Candidates Provide a copy of the CPF Memorandum to your candidates when they submit self-nomination and acceptance forms to your office.</p> <p>Verify Candidate's Eligibility To Run for Office Candidates must be eligible electors in the district in order to run for office. Contact the appropriate county clerk and recorder or the county assessor to verify eligibility of your applicants. CRS 32-1-804.3 (2); 32-1-806; 1-4-501</p> <p>Office Staffing Candidates must be permitted to 'do business' with the DEO during all filing timelines. Being available to your constituents is particularly crucial if a statutory deadline is approaching. The district should have staff available during normal business hours to accommodate candidates for director who need to submit self-nomination and acceptance forms and for those candidates who must amend their forms prior to 3:00 p.m. on the 67th day before the election.</p>	<p>A-2 THRU A-5 B-8 B-9</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>NEW February 29</p>	<p>Mail Ballot Election If the governing board of any special district determines that an election shall be by mail ballot, the designated election official for the special district shall conduct any election for the special district by mail ballot under the supervision of the secretary of state and shall be subject to rules which shall be promulgated by the secretary of state. 1-7.5-104 CRS. If no mail ballot plan is submitted by the deadline, it will be assumed that your district intends to conduct a polling place election pursuant to CRS Title 1, Article 5, Part 1.</p> <p>Ballot Issue Election (TABOR) A ballot issue election that is not part of an organizational election shall be conducted either as part of a coordinated election or in accordance with the provisions of the "Mail Ballot Election Act", article 7.5 of title 1, CRS. CRS 32-1-805 (2)</p> <p>Mail Ballot Plan - Timetable (Mail Ballot Elections) Last day to notify the Secretary of State (SOS) and submit a plan for a mail ballot election. This notice must be submitted no later than 65 days prior to the election and the Secretary of State has 25 days to respond. You may submit your plan earlier than the 65th day, however. You may also request an extension to this filing requirement from the SOS if you believe you will end up canceling your election due to lack of candidate interest. A request for an extension would be due to the SOS no later than February 27th and would provide districts with a 7-day extension. The division recommends having a mail ballot plan prepared as if you will proceed with an election. If your district legally cancels their election and you have submitted a mail ballot plan, please notify the SOS of the cancellation. CRS 1-7.5-105; SOS Election Rule 12</p> <p>Submit Mail Ballot Plans/Extension Requests to: Rose A. Sanchez, Elections Division, Office of the Colorado Secretary of State, 1700 Broadway, Suite 270, Denver Colorado 80290, Telephone: 303-894-2200, ext. 6311 - Facsimile: 303-869-4861, Email: rose.sanchez@sos.state.co.us.</p>	<p>B-10 B-11 THRU B-26</p>
<p>NEW March 3</p>	<p>Write-In Candidate Affidavit: A person who wishes to be a write-in candidate for an office in an election shall file an affidavit of intent stating that he or she desires the office and is qualified to assume its duties if elected. The affidavit shall be filed with the designated election official and no write-in vote for any office in any election shall be counted unless the person for whom the vote was cast has filed an affidavit of intent as required. In a nonpartisan election, the affidavit of intent shall be filed by the close of business on the 64th day before the election. CRS 1-4-1101 & 1-4-1102</p> <p>Campaign & Political Finance (CPF) Memorandum to Candidates Provide a copy of the CPF Memorandum to your candidates when they submit affidavits of intent to your office.</p> <p>Verify Candidate's Eligibility To Run for Office Candidates must be eligible electors in the district in order to run for office. Contact the appropriate county clerk and recorder or the county assessor to verify eligibility of your applicants. CRS 32-1-804.3 (2); 32-1-806; 1-4-501</p> <p>Office Staffing Candidates should be permitted to 'do business' with the DEO during this filing timeline. The district should have staff available during normal business hours to accommodate candidates for director who need to submit an affidavit of intent to be a write-in candidate form.</p>	<p>A-2 THRU A-5 B-8 B-76</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
March 4	<p>Election May Be Cancelled - When If the only matter before the electors in a non-partisan election is the election of persons to office and if, at the close of business on the 63rd day before the election, there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent to be a write-in candidate, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.</p> <p style="text-align: right;">CRS 1-5-208(1.5)</p> <p>Notice By Publication of Cancellation of Election The governing body shall provide notice by publication of the cancellation of the election. A copy of the notice shall be posted at each polling place of the special district, in the office of the designated election official, in the office of the clerk & recorder for each county in which the special district is located, and a copy of the notice shall be filed in the office of the division of local government within 30 days of cancellation of election. The governing body shall notify candidates that the election was cancelled and they were elected by acclamation.</p> <p style="text-align: right;">CRS 1-5-208(6)</p> <p>“Publication” means printing one time, in one newspaper of general circulation in the special district if there is such a newspaper, and, if not, then in a newspaper in the county in which the special district is located. For a special district with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the special district, then one publication is required in a newspaper in each county in which the special district is located and in which the special district also has fifty or more eligible electors.</p> <p style="text-align: right;">CRS 1-1-104(34)</p> <p>Notify Secretary of State (SOS) If you have submitted a mail ballot plan for SOS approval, please notify them of your intent to cancel the mail ballot election.</p>	B-27
March 4	<p>IF YOU HAVE CANCELLED YOUR ELECTION BECAUSE THERE WERE NOT MORE CANDIDATES THAN OFFICES TO BE FILLED: Go directly to May 14 “Certificate of Election” and resume following the election calendar from there.</p> <p>Note: Candidates and active committees, who are required to file campaign and political finance (CPF) reports, should continue to follow this calendar to meet filing deadlines. Call your county clerk and recorder to learn about terminating your committee, if applicable.</p>	
Mar 4- Mar 6	<p>Lot Drawing If it is determined that your district must hold an election, immediately notify all candidates of the date, time, and location of the lot drawing. Hold your lot drawing no later than March 6th. The lot drawing determines the order of the candidate names on the ballot and the ballot content is to be certified by March 7th.</p> <p style="text-align: right;">CRS 1-5-406</p>	

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>NEW March 7</p>	<p>Notify County Clerk of Candidacies The self-nomination and affidavit to be a write-in candidate forms must contain a statement that the candidate is familiar with the provisions of C.R.S. Title 1, Article 45, Fair Campaign Practices Act. DEO's must notify the appropriate county clerk & recorder of candidacies no later than the date established for certifying the special district ballot, no later than 60 days prior to the election. County clerks will accept a faxed copy of these forms as notification of candidacy. Special district election officials shall file with the clerk and recorder of the county in which the district court having jurisdiction over the special district pursuant to section 32-1-303, CRS is located.</p> <p style="text-align: right;">CRS 1-45-109(1); 1-45-110; CPF Rules 8.1 and 8.3</p>	<p style="text-align: center;">A-2 THRU A-5</p>
<p>March 7</p>	<p>Certification of Ballot No later than 60 days before any election, the designated election official of each special district that intends to conduct an election shall certify the order of the ballot and ballot content. The order of the ballot and ballot content shall include the name and office of each candidate for whom a self-nomination and acceptance form has been filed with the designated election official, a blank space for whom an affidavit of intent to be a write-in candidate form has been filed, if applicable, and any ballot issues or ballot questions to be submitted to the eligible electors. The special district that issues a certificate of ballot pursuant to this subsection (3) shall be solely responsible for the accuracy of the information contained in the certificate. Any error that can be corrected pursuant to the provisions of section 1-5-412 shall be corrected at the expense of the special district whose designated election official issued the defective certificate. Districts who are coordinating their election shall certify ballot content to the coordinating official. Districts who opt to hold an election without coordinating with another political subdivision certify ballot content to themselves.</p> <p style="text-align: center;">Article X, Section 20 Colorado Constitution; CRS 1-5-203(3)(a); 1-41-103; SOS Election Rules 6.5.2 and 10</p> <p>United States Postal Service Contact USPS with regards to the preparation of your mail ballot packets and bulk mail handling. If you are having a TABOR or ballot issue election, discuss the TABOR notice mailing with USPS as well. You will need to determine an approximate mailing cost per ballot to send out to electors. In addition, electors will need to know how much postage to affix to return ballots by mail to you. The cost of postage should be pre-printed on the ballot's return envelope so that your voter is aware of the appropriate amount of return postage.</p> <p>After consulting with USPS with regards to your mailing, send your print order to your printing vendor. This allows the vendor ample time for printing of the ballots, secrecy sleeves, instructional inserts, and outgoing and return envelopes so that ballots will be in the possession of the designated election official at least 30 days before the election. Consider vote history and voter turnout in previous district elections in determining the number of ballots to print for your election.</p> <p style="text-align: right;">CRS 1-5-406; 1-5-410</p>	<p style="text-align: center;">B-28</p> <p style="text-align: center;">USPS Website http://www.usps.com/electionmail/</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>TICKLE March 7 (Or soon thereafter)</p>	<p>Order Voter Registration List From County Clerk & Property Owner's List From Assessor – TABOR ELECTION ONLY You will need a complete list of active, eligible electors to mail TABOR notices to if you are to have a ballot issue election. These lists are separate from the lists you will use for poll books. TABOR notices must be mailed to "ALL REGISTERED VOTERS" at each address of one or more active registered electors 30 days before a ballot issue election, which is April 4, 2008.</p> <p>Note: If possible, try to get these lists on disc and in excel format, sorted by address. Ask the clerk and assessor to run the lists ON March 31st so the data is as current as possible and still allows your staff enough time to prepare and mail notices by the April 4th deadline. Remember, only "one" TABOR notice must be mailed to each household. In addition, lists from the clerk & recorder should provide voter status because only those electors listed with a voter status of "Active" on the county rosters are required to have a notice mailed to them.</p> <p>In addition: The clerks and assessors require detailed boundary maps and legal descriptions to provide voter and property owner lists. Please make sure that these items are already on file with these officials. The special district's recorded court order to form and/or the district's recorded service plan should have maps and legal descriptions attached to them. Elections mapping personnel, within the Clerk & Recorder's office, must have your special district's maps and legal descriptions in order to determine voter districts for your election.</p>	<p>B-29 B-30</p>
<p>March 7</p>	<p>Registration Records and Lists of Property Owners – Eligible Electors Lists (aka POLLBOOK)</p> <p>County Clerk & Recorder: No later than the 40th day preceding the date of the scheduled nonpartisan election, the designated election official shall order the registration records. The DEO may order a complete list of the registered electors as of the 30th day prior to the election with a supplementary list provided on the twentieth day. CRS 1-5-303; 1-7.5-107(2)</p> <p>County Assessor: For elections where owning property (e.g. Title 32, Article 1 Special Districts) in the special district is a requirement for voting in the election, no later than the 40th day preceding the date of the election, the DEO, in addition to using the affidavit prescribed in section 32-1-806, shall order the list of property owners from the county assessor. The county assessor shall certify and deliver an initial list of all recorded owners of taxable real and personal property within the special district no later than 30 days before the election. The supplemental list shall be provided no later than 20 days before the election and shall contain the names and addresses of all recorded owners who have become owners no later than 30 days prior to the election and since the initial list was created.</p> <p>***ORDER THESE LISTS IN ADVANCE SO THEY ARE IN YOUR POSSESS ON THE 30TH and 20TH DAY PRIOR TO THE ELECTION. ***</p> <p style="text-align: right;">CRS 1-5-301; 1-7.5-107(2); 32-1-803</p> <p>Note: The clerks and assessors require detailed boundary maps and legal descriptions to provide voter and property owner lists. Please make sure that these items are already on file with the departments. The special district's recorded court order to form and/or the district's recorded service plan should have maps and legal descriptions attached to them. Elections mapping personnel, within the Clerk & Recorder's office, must have your special district's maps and legal descriptions in order to determine voter districts for your election.</p>	<p>B-31 B-32 A-2 THRU A-5 A-6 THRU A-10</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>TICKLE March 15</p>	<p>Mail Ballot Notice – Preparation On <u>April 16th</u> a <i>Notice of Mail Ballot Election</i> must be published in accordance with CRS 1-1-104(34). Contact your local paper to learn what is required to meet this statutory deadline.</p>	B-41
<p>March 21</p>	<p>Appointment of Election Judges (Polling Place Election)</p> <p>No later than 45 days before a regular special district election, the designated election official shall appoint election judges for the special district unless otherwise directed by the board of directors of such district. The designated election official shall appoint no less than two election judges to serve as polling place judges for each precinct to perform the designated functions. The DEO may appoint other election judges, as needed, to perform duties other than polling place duties. (E.g. inspecting ballots, duplicating ballots, counting paper ballots, etc...) If, in any special district, the DEO has mailed or delivered mail-in ballots to five hundred or more electors, the DEO shall appoint, at least three (3) additional counting judges.</p> <p style="text-align: right;">CRS 1-6-105(1.5); 1-6-105(5); 1-6-106(1); 1-6-111(3) & (4); 1-8-301; SOS Election Rule 28</p> <p>Master List of Election Judges The designated election official shall make and maintain a master list of election judges who have filed an acceptance form. The list shall include the name of the judge, the polling site name/location the judge has been assigned to, if the judge has filed an acceptance form swearing they are qualified to assume the duties of an election judge, and if they have taken a required class of instruction.</p> <p style="text-align: right;">CRS 1-6-108</p> <p>Certificate of Appointment & Notice of Training After you have recruited a sufficient number of poll workers, assign workers a role and/or title, place them at a specific precinct or polling site, schedule them for judge's training, and send a certificate of appointment and notice of training. Be sure to give judges ample time to prepare to attend the class.</p>	<p>B-33</p> <p>B-34</p> <p>B-34(a)</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
March 21	<p>PRO/CON Comments for Tax Payers Bill Of Rights (TABOR) Last day for electors to file pro/con comments pertaining to local ballot issues with the DEO in order to be included in the TABOR issue mailing. Last day to withdraw a PRO/CON comment. Each special district shall accept written comments concerning ballot issues in accordance with this section. All comments filed in writing will be received and kept on file with the DEO. Only those comments that are filed by persons eligible to vote in the special district submitting the ballot issue to its electors must be summarized in the ballot issue notice. Filed comments shall be retained by the DEO as election records. To be summarized in the ballot issue notice (per TABOR), the comments shall address a specific ballot issue and shall include a signature and an address where the signor is registered to vote and shall be filed with the designated election official for the special district. Article X, Section 20(3)(b)(v) of the Colorado State Constitution, requires comments to be filed 45 days before an election and since such day is always a Saturday, all comments shall be filed by the end of the business day on the Friday before the 45th day before the election.</p> <p style="text-align: right;">Art X, Sec 20(3)(b)(v) Colorado Constitution; CRS 1-7-901; SOS Election Rule 5.1 and 21</p> <p>Comments for referred measures are to be summarized by the designated election official. Legal counsel should be consulted to determine the 500 words that are used to summarize all comments, pro and con. Remember, TABOR notices must be printed and in the mail at least 30 days before a ballot issue election, which is April 4, 2008.</p> <p style="text-align: right;">CRS 1-7-903(1) & (3); SOS Election Rule 6.5.6 (a) & (b)</p>	B-36 THRU B-38
<p>NEW March 24- May 5</p>	<p>Judges Training (Polling Place Election) The designated election official shall hold a class of instruction concerning the tasks of an election judge and a special school of instruction concerning the task of a supply judge not more than 45 days prior to each election. Each person appointed as an election judge (even if they have served in the past) shall be required to attend one class of instruction prior to the first election in an election cycle in which the person will serve as an election judge.</p> <p style="text-align: right;">CRS 1-6-101(4), (5) & (6)</p> <p>Note: The Special District Association (SDA) will be offering either a DVD or in-class training. If you are interested in sending your polling place election judges to them for the required training, call the SDA at 303-863-1733 for more information.</p>	<p style="text-align: center;">SDA Website http://www.sdaco.org/</p>
<p>NEW March 25</p>	<p>Mail Ballot Plan The last day for the Secretary of State (SOS) to give written approval to a submitted mail ballot plan, if the plan was filed by the February 29th deadline. (The SOS has 25 days to respond to the submitted plan.) Call the SOS if you have not received a response by now.</p> <p style="text-align: right;">CRS 1-7.5-105 (2)</p>	
<p>TICKLE March 25</p>	<p>Prepare For Publishing of the Polling Place Election Notice Make arrangements with your local newspaper for the <u>April 25TH</u> polling place election notice requirements.</p>	B-45

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<p>March 27 thru April 4</p>	<p>TABOR Election - Preparation, Form & Mailing of Notices The designated election officials of overlapping special districts conducting an election other than in November shall confer concerning the preparation of the ballot issue notice no later than 40 days prior to the date of the election. At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts overlap, a titled notice or set of notices addressed to "ALL REGISTERED VOTERS" at each address of one or more active registered electors. Keep extra copies on hand at the DEO's office for those electors who do not receive their notices by mail.</p> <p>Prepare Fiscal Information per CRS 1-7-902 Prepare Comments per CRS 1-7-903 Prepare Notices per CRS 1-7-905 Pick up elector and property owner lists from the county clerk and county assessor no later than March 31st. Mail Notices per 1-7-906; 1-7-907 on April 4th.</p> <p style="text-align: right;">Art X, Sec 20(3)(b) Colorado Constitution; SOS Election Rule 5.1 and 21</p>	<p>B-36 THRU B-38</p>
<p>TICKLE April 1</p>	<p>Prepare Information for Additional Posting Requirement (Election to create debt) If your district is having an election to create financial obligation you will have to post a notice of detailed information on the district's website or at the district's chief administrative office by April 16th. The information required in this notice is listed in CRS 1-7-908(1)(a)(l) thru (v) and is in addition to the data required for your TABOR notice mailing.</p>	<p>B-42</p>
<p>April 4</p>	<p>Registration Records & Property Owners Lists – Supplemental Lists – (aka POLLBOOK)</p> <p>Pick up the supplemental 30-day lists from the county assessor and the county clerk and recorder. Make arrangements with the county clerk and recorder to use one of their computer terminals to verify non-resident property owner's Colorado State voter registration status. DEO's must verify this data before giving out ballots. Only those non-resident property owners, who are registered to vote in the State of Colorado at least 29 days before the election, are eligible to receive a ballot in your election.</p>	

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>April 4- April 29</p>	<p>Ballot Content and Form of Ballots</p> <p>The DEO shall provide printed ballots for every election. The official ballots shall be printed and in the possession of the designated election official at least 30 days before the election. Mail-in ballots (formerly absentee) shall be in the same form as other official ballots for the same election except that on the stubs of the mail-in ballot shall be printed "M.I.V. Number _____", and such stubs shall be numbered consecutively, commencing with the number 1.</p> <p>Note: If the ballots have not arrived from your printing vendor by now, follow up!</p> <p style="text-align: right;">CRS 1-5-406; 1-5-407; SOS Election Rule 5.3</p> <p>Delivery of Mail-In Ballot Packets (formerly Absentee)</p> <p>The mail-in ballot and other materials shall be delivered or mailed to the elector within 72 hours after the receipt of the application, if the official ballots are then printed, or if not then printed, within 72 hours after the printed ballots are in the possession of the DEO. If mailed, and not delivered, the envelope shall be marked "DO NOT FORWARD-ADDRESS CORRECTION REQUESTED."</p> <p>Note: Before sending out mail-in ballots, be certain to verify voter eligibility against the voter registration lists and property owner's lists. Be careful not to send more than one ballot to any eligible elector.</p> <p style="text-align: right;">CRS 1-8-111</p> <p>Mail-In Ballot Packet</p> <p>A ballot, voter instructions, return envelope, and secrecy sleeve constitutes a 'mail-in ballot packet.'</p> <p style="text-align: right;">1-7.5-103(5)</p> <p>List of Mail-In Ballots</p> <p>The DEO shall keep a list of names and precinct numbers of eligible electors applying for mail-in ballots together with the date on which each application was made, the date on which the mail-in ballot was sent, and the date on which each mail-in ballot was returned. If a mail-in ballot is not returned or if it is rejected and not counted, that fact shall be noted on the list.</p> <p style="text-align: right;">CRS 1-8-108</p>	<p>B-39</p>
<p>April 7</p>	<p>Registration Deadline</p> <p>Electors shall be permitted to vote if the elector is registered to vote no later than 29 days before the election.</p> <p style="text-align: right;">CRS 1-2-201(3)</p> <p>Note: Send anyone who wishes to register to vote, to the county clerk and recorder of the county in which the elector resides.</p>	

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
April 11	<p>Establish Polling Places – Polling Place Election No later than 25 days prior to the election, the DEO, with approval of the governing body with authority to call elections, shall divide the jurisdiction into as many election precincts as it deems expedient for the convenience of eligible electors of the jurisdiction and shall designate the polling place for each precinct. If there are no appropriate polling place locations within the special district conducting the election, a polling place may be designated outside of the special district in a location that is convenient for the eligible electors of such special district. Each polling place, or walk-in site, shall be accessible to persons with disabilities.</p> <p style="text-align: right;">CRS 1-5-102 and SOS Election Rule 5.2</p> <p>Note: District officials should begin securing polling sites sooner than 25 days. Contact your county clerk and recorder for polling place maps and contact information for the polling sites they used in the last general election.</p>	
April 11- April 21	<p>Mail Ballot Election – Mail Ballot Packets to be Mailed No sooner than 25 days before an election, and no later than 15 days before an election, the DEO shall mail to each active registered elector, at the last mailing address appearing in the registration records and in accordance with the United States postal service regulations, a mail ballot packet, which shall be marked “Do Not Forward – Address Correction Requested,” or any other similar statement that is in accordance with the United States Postal Service regulations. Ballots returned undeliverable or with a forwarding address shall not be resent unless the eligible elector requests a replacement ballot.</p> <p style="text-align: right;">CRS 1-7.5-101; 1-7.5-107(3)(a); SOS Election Rule 12.1.1.1</p> <p>What should be inside a mail ballot packet A ballot, voter instructions, return envelope, and secrecy sleeve constitutes a ‘mail ballot packet.’ Secretary of State may otherwise prescribe the form of materials to be used. Instructions should inform the voter of the amount needed, in postage, to return the voted ballot with secrecy sleeve.</p> <p style="text-align: right;">1-7.5-103(5); 1-7.5-106(1)(a); SOS Election Rule 12.1 and 12.1.1.1</p>	B-19 B-20 B-22 B-23 B-25 B-26 B-28
April 11- May 6	<p>Office Staffing Eligible electors must be permitted to ‘do business’ with the DEO, in-office, starting 25 days prior to the election and until the close of the polls on Election Day. You must have staff available during normal business hours beginning April 11th and from 7:00 a.m. and until 7:00 p.m. on Election Day.</p> <p>Ballots Available In-Office No sooner than 25 days prior to election day, nor later than 7pm on election day, mail ballots shall be made available at the DEO’s office, or the office designated in the mail ballot plan filed with the secretary of state, for eligible electors who are not listed, or are listed as “inactive” on the county voter registration records or, for special district mail ballot elections, on the list of property owners or the registration list but who are authorized to vote pursuant to section 32-1-806, C.R.S., or other applicable law.</p> <p style="text-align: right;">CRS 1-7.5-107(3)(c)</p> <p>Replacement Ballots An eligible elector may obtain a replacement ballot if their ballot was spoiled, lost, or never received.</p> <p style="text-align: right;">CRS 1-7.5-107(3)(d)</p>	B-40

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
April 15	<p>Campaign and Political Finance Reporting period April 27, 2007 through April 10, 2008 for inactive candidates and committees going to active in 2008. Reporting period June 3, 2007 through April 10, 2008 for active candidates and committees staying active in 2008. Candidates and committees must file required reports with the appropriate county clerk and recorder.</p> <p style="text-align: right;">CRS 1-45-108(c); 1-45-109(2); 1-45-110; 32-1-103(21); CPF Rules 5.8 & 5.9</p>	<p style="text-align: center;">Tab 5 of Manual Or visit SOS Website</p>
April 16	<p>Registration Records & Property Owners Lists – Supplemental List Pick up 20-day lists from the county assessor and the county clerk and recorder. Make arrangements with the county clerk and recorder to use one of their computer terminals to verify property owner’s Colorado State voter registration status. DEO’s must verify this data before sending out ballots. Only those non-resident property owners, who are registered to vote in the State of Colorado at least 29 days before the election, are eligible to receive a ballot. Compare this list to the previous 30-day list to be certain there is no duplicate information. It is the DEO’s responsibility to assure that no voter receives more than one ballot for any election.</p>	
April 16	<p>Notice By Publication - Mail Ballot Election No later than 20 days before an election, the designated election official (DEO), or the coordinated election official, if so provided by an intergovernmental agreement, shall provide notice by publication of a mail ballot election conducted pursuant to the provisions of this article, which notice shall state, as applicable for the particular election for which the notice is provided, the items set forth in section 1-5-205(1)(a) to (1)(e).</p> <p style="text-align: right;">CRS 1-7.5-107(2.5)(a); 1-5-205(1)(a) thru (1)(e)</p> <p>Note: It is recommended that districts run this notice to coordinate with mailing of ballots on April 11th. You <i>may</i> publish this required notice <i>sooner</i> than 20 days before the election, but no later than 20 days before the election.</p> <p>‘Publication’ is defined as printing one time, in a newspaper of general circulation in the special district if there is such a newspaper, and if not, then in a newspaper in the county in which the special district is located.</p> <p style="text-align: right;">CRS 1-1-104(34)</p>	<p style="text-align: center;">B-41</p>
April 16	<p>Additional Notice - Election To Create Financial Obligation (if applicable) A district submitting a ballot issue concerning the creation of debt or other financial obligation at an election in the district shall post notice of detailed information on the district's website or, if the district does not maintain a website, at the district’s chief administrative office no later than 20 days before the election.</p> <p style="text-align: right;">Art X Sec 20 (3)(b) Colorado Constitution; CRS 1-7-908(1)(a)(I) thru(V)</p>	<p style="text-align: center;">B-42</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
April 21	<p>Canvass Board At least 15 days before an regular special district election, the designated election official shall appoint at least one member of the board of such district, who is not running for office, and at least one eligible elector of the special district who is not a member of such board, to assist the designated election official in the survey of returns. The persons so appointed and the designated election official constitute the board of canvassers for the election.</p> <p style="text-align: right;">CRS 1-10-201; SOS Election Rule 41</p>	B-43
April 24	<p>Polling Place - Designation By Sign All polling places shall be designated by a sign conspicuously placed at least twelve (12) days before each election.</p> <p style="text-align: right;">CRS 1-5-106</p>	B-44
April 25	<p>Notice of Polling Place Election</p> <p>Publish Notice The designated election official, no later than ten days before each election, shall provide notice by publication of the election as described by section 1-1-104(34), which notice shall state date of election, hours during with polls will be open on election day, address of walk-in location and hours during which the walk-in location for the delivery of mail ballots and receipt of replacement ballots will be open, the address of the location for application and the return of mail-in ballots and hours; and the complete ballot content.</p> <p style="text-align: right;">CRS 1-5-205(1)(a) thru (e)</p> <p>'Publication' is defined as printing one time, in a newspaper of general circulation in the special district if there is such a newspaper, and if not, then in a newspaper in the county in which the special district is located.</p> <p style="text-align: right;">CRS 1-1-104(34)</p> <p>Copy of Notice to Clerk and Recorder At the time that notice of publication is made, the designated election official shall also mail a copy of the notice of election to the county clerk and recorders of the counties in which the special district is located.</p> <p style="text-align: right;">CRS 1-5-205(1)</p>	B-45 THRU B-46 A-2 THRU A-5
April 25 – May 8	<p>Post Copy of Notice In the Office of the DEO A copy of the notice of polling place election as required above shall be posted at least 10 days prior to the election and until 2 days after the election in a conspicuous place in the office of the designated election official. Sample ballots may be used as notices so long as the information required by this section is included with the sample ballot.</p> <p style="text-align: right;">CRS 1-5-205(1.3)</p>	B-45 THRU B-46

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>Counting of Ballots May Begin</p> <p>Saturday April 26</p>	<p>Oath of Judges Before beginning the duties of an election judge, each person appointed as a mail ballot election judge shall take a self-affirming oath or affirmation. CRS 1-6-114</p> <p>Counting Mail and/or Mail-In Ballots The election officials at the mail ballot or mail-in counting place may <i>receive and prepare</i> ballots delivered and turned over to them by the designated election official for tabulation prior to this deadline. However, the actual counting of the mail ballots may not begin until 10 days prior to the election and shall continue until counting is complete. The election official in charge of the ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7:00 p.m. on Election Day.</p> <p>Delivery of Ballots to Counting Facility The DEO shall deliver to the judges of the ballot counting place all the mail-in or mail ballot envelopes received up to that time in packages or ballot boxes that are locked and secured with a numbered seal. CRS 1-7-307; 1-7.5-107.5; 1-8-302; SOS Election Rule 27.3</p>	<p>B-35</p>
<p>April 29</p>	<p>Mail-In (formerly Absentee) Ballot Application Deadline - If Voter Is To Receive Ballot By Mail You must process applications and send a ballot packet out within 72 hours after the request. Verify voter eligibility against the voter registration lists and property owner's lists before sending out mail-in ballot packets. CRS 1-8-104(3)</p>	<p>B-2</p>
<p>May 1</p>	<p>Campaign and Political Finance - Annual Filing Reporting period April 27, 2007 through April 26, 2008. Committees, who have not terminated their committee from a previous year, must file an annual report with the appropriate county clerk and recorder, as long as the committee remains open. CRS 1-45-108(c); 1-45-109(2); 1-45-110; 32-1-103(21); CPF Rules 5.8 & 5.9</p>	<p>Tab 5 of Manual Or visit SOS Website</p>
<p>May 2</p>	<p>Campaign and Political Finance Reporting period April 11, 2008 through April 27, 2008. Candidates and Committees must file required reports with the appropriate county clerk and recorder. CRS 1-45-108(c); 1-45-109(2); 1-45-110; 32-1-103(21); CPF Rules 5.8 & 5.9</p>	<p>Tab 5 of Manual Or visit SOS Website</p>
<p>May 2</p>	<p>Mail-In (formerly Absentee) Ballot Application Deadline – If Voter Is To Receive Ballot In-Office Verify voter eligibility against the voter registration lists and property owner's lists before giving applicants a ballot. CRS 1-8-104(3)</p>	<p>B-2</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
May 5	<p>Registration Records – Polling Place Election The designated election official, at least one day prior to any election, shall cause the registration records and all necessary registration supplies to be delivered to the supply judge. The registration records (and property owner’s lists) shall be delivered in a sealed envelope or container to the supply judge, who shall have custody of and shall give a receipt for the records. CRS 1-5-301(2)</p> <p>Ballots The designated election official shall have a sufficient number of ballots printed and distributed to polling place election judges in their respective precincts. The packages of ballots shall be delivered on any day on which a judges' school of instruction is held or by 8pm on the Monday before Election Day. Receipts for the ballots shall be filed with the DEO who shall record and track the security of such ballots. The supply judge shall produce the sealed ballots on election day, in the presence of all judges, and shall open the packages. CRS 1-5-410; 1-5-501</p> <p>Supplies For Use At The Polls Supply judges should pick up election materials to be used at the polling place on Election Day. Supplies include, but are not limited to oaths, pay sheets, signs, election forms, poll books, voter instruction cards, sign-in cards or affidavits, accounting and tally forms, assistance instruction cards and forms, challenge of vote forms, pens, and provisional ballots and envelopes. A check-list should be created as well as a receipt system for all supplies given to judges.</p>	B-35 B-47 THRU B-69
May 5 – May 6 until 5pm	<p>Emergency Mail-In Voting (Polling Place Election) In the event that an eligible elector or a member of an eligible elector’s immediate family, related by blood or marriage to the 2nd degree, is confined in a hospital or place of residence on Election Day and the confinement occurred because of conditions arising after the last day to apply for a mail-in ballot, the elector may request in a personally signed written statement that the designated election official send a mail-in ballot with the word “EMERGENCY” stamped on the stubs. The request must be made no later than 5pm on election day and returned no later than 7pm on election day.</p> <p>Note: Verify voter eligibility against the voter registration lists and property owner’s lists before giving applicant’s family member a ballot. CRS 1-8-115</p>	B-77

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
May 6	<p>ELECTION DAY - POLLS OPEN FROM 7:00 AM UNTIL 7:00 PM</p> <p>Oath of Judges: Before beginning duties of an election judges, each person appointed as an election judge shall take a self-affirming oath. CRS 1-6-114</p> <p>Watchers: A watcher must surrender a certificate of appointment of watcher to the election judge on duty. The election judge shall administer the oath of watcher and retain the certificate, as part of the election day forms, to be returned to the DEO at the end of the day. CRS 1-7-107</p> <p>Counting By Receiving Judges: As soon as the polls have closed, the receiving judges shall immediately open the ballot box and proceed to count the ballots in the manner prescribed in section 1-7-307. The receiving judges shall not adjourn until the counting is finished.</p> <p>Counting By Counting Judges: A DEO may hire additional staff to count ballots throughout the day. CRS 1-7-305; 1-7-306; 1-7-307; 1-7-308</p> <p>Delivery of Mail-In Ballots to Supply Judge at Polling Place: On election day, the designated election official shall deliver to the judges of the mail-in counting place all the mail-in envelopes received up to that time in packages or in ballot boxes that are locked and secured until 7pm on Election Day. With the envelopes, the DEO shall deliver to the supply judge written instructions, which shall be followed by the election judges in casting and counting the ballots, and all the lists, records, and supplies needed for tabulating, recording, and certifying the mail-in ballots. CRS 1-7-701; 1-8-303; 1-8-304; 1-8-306</p> <p>Judges to Post Returns: The judges shall make an abstract of the count of votes, which abstract shall contain the names of offices, names of the candidates, ballot titles, initiated, referred, or other ballot issues voted upon and the number of votes counted for or against each candidate or ballot issue. The abstract shall be posted in a conspicuous place that can be seen from the outside of the polling place immediately upon completion of the counting. The abstract may be removed at any time after forty-eight (48) hours following the election.</p> <p>Note: These results are unofficial. Provisional ballots have yet to be verified and counted. CRS 1-7-601; 1-7-602; 1-8-308</p> <p>Delivery of Election Returns, Ballot Boxes, and other Supplies: When all the votes have been read and counted, the election judges selected in accordance with 1-6-109.5 shall deliver to the designated election official the certificate and statement required by section 1-7-601, ballot boxes and all keys to the boxes, paper tapes, "proms" or other electronic devices, the registration book, poll books, accounting forms, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, and other election papers and supplies. Delivery shall be made at once and with all convenient speed. The designated election official shall give the judge a receipt for all returned materials and supplies. CRS 1-8-309; SOS Election Rule 7</p> <p>Provisional Ballots and Follow Up Information System: For any election in which a provisional ballot is cast, the designated election official shall establish a system allowing an elector who cast a provisional ballot to discover whether the ballot was counted and, if the ballot was not counted, the reason the ballot was not counted. The system shall provide access to this information at no cost to the voter by toll-free telephone call, internet website, or other suitable medium. All provisional ballots shall be secured and returned to the designated election official for verification and counting. A provisional ballot board will be appointed to handle the counting of provisional ballots. CRS 1-8.5-105</p>	B-35 B-47 B-62 THRU B-68

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
May 6	<p>MAIL BALLOT ELECTION – OFFICE OPEN 7:00 A.M. - 7:00 P.M.</p> <p>Mail ballots shall be made available at the designated election official's office, or the office designated in the mail ballot plan filed with the secretary of state, for eligible electors who are not listed or who are listed as “Inactive” on the county voter registration records, or for special district mail ballot elections, on the list of property owners or the registration list but who are authorized to vote pursuant to section 32-1-806 CRS, or other applicable law.</p> <p style="text-align: right;">CRS 1-7-303; 1-7.5-107(3)(c)</p> <p>Replacement Ballots – In-Office</p> <p>An eligible elector may obtain a replacement ballot if their ballot was spoiled, lost, or never received.</p> <p style="text-align: right;">CRS 1-7.5-107(3)(d)</p>	<p style="text-align: center;">B-78</p> <p style="text-align: center;">B-40</p>
May 7 – May 20	<p>Provisional Ballots – Counting Procedure</p> <p>The designated election official, using the procedures and databases prescribed by the secretary of state by rules promulgated in accordance with article 4 of title 24, CRS, shall attempt to verify that an elector who cast a provisional ballot is eligible to vote. The DEO shall complete the preliminary verification of the elector's eligibility to vote BEFORE the ballot is counted. Verification includes accessing data bases that are not traditionally available to a special district DEO. You may need to contact the county clerk and recorder for assistance with verification of provisional ballots before counting may begin. Verification against the voter registration data base (clerk & recorder), the property owner's data base (assessor), the state's data base (by using the clerk's computer), and motor vehicle's data base is required. Ensure that a provisional voter has not already voted in the election by referring to the Master Ballot Log Sheet.</p> <p style="text-align: right;">CRS 1-8.5-105; SOS Election Rule 26</p> <p>Handling of Provisional Ballots</p> <p>Provisional ballots shall be kept separate from all other ballots and counted separately. A provisional ballot board shall be appointed by the designated election official to count provisional ballots after verification of eligibility is complete.</p> <p style="text-align: right;">CRS 1-8.5-110</p> <p>Forward Copies of Provisional Ballot Affidavits & Identifications to the Appropriate County Clerk & Recorder</p> <p>The provisional ballot affidavit shall constitute a voter registration application for the voter for future elections. Therefore, copies of the affidavits should be forwarded to the county clerk and recorder as soon as possible. Original provisional affidavits are to be kept as part of the election records within the special district. In addition, forward copies of any identification to the clerk and recorder. The clerk will need these documents to update ID requirements in their voter registration system, changing the elector from “Non-ID Compliant” to “ID Compliant.”</p> <p style="text-align: right;">CRS 1-8.5-103; SOS Election Rule 5.5.12</p>	<p style="text-align: center;">B-55 THRU B-56 B-69 A-2 THRU A-5</p>

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
May 13	<p>Canvassers Abstract of Votes Cast No later than seven (7) days after an election, unless provisional ballots are still being verified and counted, the canvass board shall certify to the designated election official the official abstract of votes cast for all candidates, ballot issues, and ballot questions in that election.</p> <p style="text-align: right;">CRS 1-10-203</p>	B-70
May 14	<p>Certificates of Election – Immediately After The Final Abstract of Votes Cast</p> <p>Notify Candidates: Except in the case of offices for which a recount is required, immediately after the final abstract of votes cast for each office has been prepared and certified, the designated election official shall notify the candidates of their election to office by issuing a formal certificate of election. After any required bond and oath is filed, the DEO shall make a formal certificate of election for each person who was elected and shall deliver the formal certificate to that person.</p> <p>Note: If your district legally cancels an election, your candidates are elected by acclamation and require the same notice and certificate of election as outlined above.</p> <p style="text-align: right;">CRS 1-11-103(1)</p> <p>Notify Petition Representatives/Governing Body: Except in the case of ballot issues or ballot questions for which a recount is required, immediately after the abstract of votes cast for each ballot issue or ballot question has been prepared and certified, the DEO shall notify the governing body of the district conducting the election and the petition representatives of the ballot issue or ballot question of the election result and shall make a certificate of the votes cast for and against each ballot issue and for and against each ballot question available for public inspection in the office of the DEO for no less than ten days following the completion of the abstract of votes cast by the canvass board.</p> <p style="text-align: right;">CRS 1-11-103(2)</p>	B-79 B-80
May 30- June 13	<p>Recount If it appears, as evidenced by the abstract of votes cast that a recount is required for any office, question, or issue, the DEO shall order a recount of votes cast for the office, issue, or question no later than the 25th day after the election and shall be completed no later than the 40th day after the election.</p> <p style="text-align: right;">CRS 1-10.5-104; SOS Election Rule 14</p> <p>Recounts Required If: The difference between the highest number of votes cast in that election contest and the next highest number of votes cast in that election contest is less than or equal to one-half of one percent of the highest vote cast in that election contest. If there is more than one person to be elected in an election contest, a recount shall be held if the difference between the votes cast for the candidate who won the election with the least votes and the candidate who lost the election with the most votes is less than or equal to one-half of one percent of the votes cast for the candidate who won the election with the least votes. Recount occurs only after the canvass board has certified the original vote count.</p> <p style="text-align: right;">CRS 1-10.5-101(b); 1-11-102</p>	B-71

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
June 5	<p>Results Certified to the Division The results of a special district election shall be certified to the division of local government, pursuant to 1-11-103(3), within 30 days after the election as provided in 32-1-104(1) and shall include the district's business address, telephone number, contact person, and if applicable, a district email address and facsimile.</p> <p style="text-align: right;">CRS 1-10-203(1); 1-11-103(3); 32-1-104(1)</p> <p>If an election is cancelled pursuant to section 1-5-208, the notice and copy of the resolution of cancellation shall be filed with the division of local government. Attach an actual <i>copy</i> of the notice that was published in the newspaper, as evidence of cancellation. A notice of cancellation and certificate of results shall include the district's business address, telephone number, contact person, and if applicable, a district email address and facsimile.</p> <p style="text-align: right;">CRS 1-10-203(2)</p>	B-72 B-27
June 5	<p>Each Special District Shall Register Information When Certifying Election Results Each special district shall register its business address, telephone number, and contact person with the division of local government when certifying the results of a district election pursuant to 1-11-103. Please also provide a facsimile for your district and a district email address for optimal correspondence.</p> <p style="text-align: right;">CRS 1-11-103; 32-1-104</p>	

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
June 5	<p>Oath of Office and Bond for Directors Each director, within 30 days after his election, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law. When an election is cancelled, each director who was elected by acclamation shall also take the oath within 30 days after the date of the regular election. An oath may be administered by the county clerk and recorder, the clerk of the court, by any person authorized to administer oaths in this state, or by the chairman of the board and shall be filed with the clerk of the court and with the Division of Local Government, 1313 Sherman St., Rm 521, Denver CO 80203) CRS 32-1-901(1)</p> <p>Individual, Schedule, or Blanket Surety Bond At the time of filing said oath, there shall also be filed with the Division of Local Government, for each director, an individual, schedule, or blanket surety bond at the expense of the special district, in an amount determined by the board of not less than \$1,000 each, conditioned upon the faithful performance of his duties as director. The treasurer shall file with the clerk of the court, at the expense of the special district, a corporate fidelity bond in an amount determined by the board of not less than \$5,000, conditioned on the faithful performance of the duties of his office. CRS 32-1-901(2); 32-1-902(2)</p> <p>Failure to File If any director fails to take the oath or furnish the requisite bond within the period allowed, except for good cause shown, his office shall be deemed vacant, and the vacancy thus created shall be filled in the same manner as other vacancies in the office of director. Note: Individuals appointed to fill vacancies must also take an oath within 30 days. The oath and bond must be filed with the Division of Local Government. CRS 32-1-901(3)</p> <p>Commencement of Terms The regular terms of office of all nonpartisan officers elected at regular elections shall commence at the next meeting of the governing body following the date of the election, but no later than thirty days following the survey of returns and upon signing of an oath and posting of a bond. The current board should be present to call this meeting to order. CRS 1-2-202</p>	B-73 B-74
June 5	<p>Campaign and Political Finance Reporting period April 28, 2008 through May 31, 2008. Candidates and committees must file required reports with the appropriate county clerk and recorder. CRS 1-45-108(c); 1-45-109(2); 1-45-110; 32-1-103(21); CPF Rules 5.8 & 5.9</p>	Tab 5 of Manual Or visit SOS Website

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
June 20	<p>Special District Debt The results of special district ballot issue elections to incur general obligation indebtedness shall be certified by the special district by certified mail to the board of county commissioners of each county in which the special district is located or to the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to 32-1-204.5 or 32-1-204.7 within 45 days after the election. The special district shall file a copy of any certification with the Division of Securities, 1580 Lincoln, Denver CO 80203.</p> <p style="text-align: right;">CRS 32-1-1101.5</p>	
January 15, 2009	<p>District Contact Information On or before January 15 of each year, a special district shall notify the board of county commissioners, the county assessor, the county treasurer, and the county clerk and recorder of each county in which the special district is located, and the division of local government of the name of the chairman of the board, the contact person, the telephone number, and the business address of the special district.</p> <p style="text-align: right;">CRS 32-1-104(2)</p> <p>The division is working to create an accurate and complete electronic data base of special district email addresses. Please provide your district's email address, and whenever possible, a facsimile number.</p>	B-75
No Sooner Than July 2010	<p>Election Records The designated election official <i>shall</i> be responsible for the preservation of any election records for a period of at least twenty-five (25) months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later.</p> <p style="text-align: right;">CRS 1-7-802; SOS Election Rule 41.7</p> <p>Note: Official Abstracts/Canvass Results, Notice of Cancellation and Certification of Election, ballot text and language, and oaths of office <i>should</i> be kept within the district's office, indefinitely. Please strive to maintain a usable filing system that future directors can easily access and utilize.</p>	

DATE	ACTION TO BE TAKEN WITH ASSOCIATED CITATION	FORM OR SAMPLE DOCUMENT
<p>Please report any calendar errors or discrepancies to Terri Maulik.</p> <p>DLG appreciates your suggestions for improvement.</p> <p><i>Thank you.</i></p>	<p>Special District Elections - Contact Person</p> <p>Please visit the Department of Local Affairs', Division of Local Government's website for information regarding elections. Bookmark this page and watch for regular updates and changes to election materials. Districts are encouraged to sign up for important email notifications that are now available to you through our website.</p> <p style="text-align: center;"><i>Web Address: http://dola.colorado.gov/elections/</i></p> <p>Be certain to put your Division of Local Government, Special District Election Specialist's contact information into your address book:</p> <p style="text-align: center;">Terri L Maulik, District Election Specialist Division of Local Government 1313 Sherman St., Rm 521 Denver CO 80203 Email: terri.maulik@state.co.us Main Phone: 303-866-2156 Direct Phone: 303-866-2639 Fax: 303-866-4819</p>	

TITLE 1

ELECTIONS

Editor's note: Articles 1 to 12 of this title were originally enacted as articles 1, 3, 4, 9 to 19, and 24 of chapter 49 in C.R.S. 1963. The substantive provisions of these articles were recodified in 1992, effective January 1, 1993, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963.

Cross references: For school elections, see articles 30, 31, and 42 of title 22; for elections for removal of county seats, see article 8 of title 30; for municipal elections, see article 10 of title 31; for special district elections, see part 8 of article 1 of title 32; for exemption of certain statutory proceedings from the rules of civil procedure, see C.R.C.P. 81.

GENERAL, PRIMARY, AND CONGRESSIONAL VACANCY ELECTIONS

Art. 1.	Elections Generally, 1-1-101 to 1-1-303.
Art. 1.5.	Help America Vote Act, 1-1.5-101 to 1-1.5-106.
Art. 2.	Qualifications and Registration of Electors, 1-2-101 to 1-2-703.
Art. 3.	Political Party Organization, 1-3-100.3 to 1-3-108.
Art. 4.	Elections - Access to Ballot by Candidates, 1-4-101 to 1-4-1305.
Art. 5.	Notice and Preparation for Elections, 1-5-101 to 1-5-802.
Art. 6.	Election Judges, 1-6-101 to 1-6-122.
Art. 7.	Conduct of Elections, 1-7-101 to 1-7-908.
Art. 7.5.	Mail Ballot Elections, 1-7.5-101 to 1-7.5-112.
Art. 8.	Mail-in and Early Voting, 1-8-101 to 1-8-311.
Art. 8.5.	Provisional Ballots, 1-8.5-101 to 1-8.5-112.
Art. 9.	Challenges, 1-9-101 to 1-9-306.
Art. 10.	Survey of Returns, 1-10-101 to 1-10-309.
Art. 10.5.	Recounts, 1-10.5-101 to 1-10.5-110.
Art. 11.	Certificates of Election and Election Contests, 1-11-101 to 1-11-311.
Art. 12.	Recall and Vacancies in Office, 1-12-101 to 1-12-210.
Art. 13.	Election Offenses, 1-13-101 to 1-13-803. (Part 9 Reserved).
Art. 14.	Affiliation, Designation, Nomination of Candidates (Repealed).
Art. 15.	Primary Elections (Repealed).
Art. 16.	General Elections (Repealed).
Art. 17.	Presidential Electors (Repealed).

OTHER ELECTION PROVISIONS

Art. 30.	Other Election Offenses (Repealed).
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INITIATIVE AND REFERENDUM

Art. 40.	Initiative and Referendum, 1-40-101 to 1-40-134.
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ODD-YEAR ELECTIONS

Art. 41.	Odd-year Elections, 1-41-101 to 1-41-103.
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ELECTION CAMPAIGN REGULATIONS

Art. 45.	Fair Campaign Practices Act, 1-45-101 to 1-45-118.
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GENERAL, PRIMARY, AND CONGRESSIONAL VACANCY ELECTIONS

ARTICLE 1

Elections Generally

Editor's note: This article was numbered as article 1 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactments are shown in editor's notes following each section.

Law reviews: For a discussion of a Tenth Circuit decision dealing with elections, see 66 Den. U.L. Rev. 757 (1989); for article, "Psst-There's a New Election Code", see 22 Colo. Law. 1703 (1993); for article, "Hey, They Revised the Election Code Again!", see 23 Colo. Law. 1821 (1994); for article, "Yes, Even More Election Code Revisions", see 24 Colo. Law. 1803 (1995); for article, "Fill in the Blank: More ____ Election Code Revisions", see 25 Colo. Law. 93 (August 1996); for article, "Wow, What a Surprise! Still More Election Code Revisions", see 26 Colo. Law. 77 (August 1997); for article, "Florida Fallout and Other Colorado Election Law Amendment of 2002", see 31 Colo. Law. 63 (August 2002).

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PART 1

DEFINITIONS AND GENERAL PROVISIONS

1-1-101. Short title. Articles 1 to 13 of this title shall be known and may be cited as the "Uniform Election Code of 1992"; within these articles, "this code" means the "Uniform Election Code of 1992".

Source: L. 92: Entire article R&RE, p. 624, § 1, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-1-101 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

1-1-102. Applicability. (1) This code applies to all general, primary, congressional vacancy, school district, special district, ballot issue, and other authorized elections unless otherwise provided by this code. This code applies to any municipal election conducted as part of a coordinated election except to the extent that this code conflicts with a specific charter provision. Any municipality may provide by ordinance or resolution that it will utilize the requirements and procedures of this code in lieu of the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S., with respect to any election.

(2) For elections that must be coordinated pursuant to section 20 (3) (b) of article X of the Colorado constitution where the enabling legislation does not require that the electors be registered electors, the political subdivision may conduct its elections pursuant to the enabling legislation but it must assure that the notice required by part 9 of article 7 of this title is provided to the election official responsible for publishing the ballot issue notice.

Source: L. 92: Entire article R&RE, p. 624, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1393, § 1, effective July 1. **L. 94:** (2) amended, p. 1149, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-102 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

Cross references: For the definitions of "general", "primary", and "congressional vacancy" elections, see §§ 1-1-104 (17), 1-1-104 (32), and 1-1-104 (5), respectively.

1-1-103. Election code liberally construed. (1) This code shall be liberally construed so that all eligible electors may be permitted to vote and those who are not eligible electors may be kept from voting in order to prevent fraud and corruption in elections.

(2) It is also the intent of the general assembly that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance.

(3) Substantial compliance with the provisions or intent of this code shall be all that is required for the proper conduct of an election to which this code applies.

Source: L. 92: Entire article R&RE, p. 624, § 1, effective January 1, 1993. **L. 96:** (1) amended and (3) added, p. 1732, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-103 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-180.

1-1-104. Definitions. As used in this code, unless the context otherwise requires:

(1) "Abstract of votes cast" means a certified record of the results in each election for candidates for any office, ballot issue, or ballot question that the county clerk and recorder certified for the ballot.

(1.1) "Address of record" means the elector's place of residence as specified in accordance with section 1-2-204 (2) (f).

(1.2) "Affiliation" means an elector's decision to affiliate with either a political party or a political organization, as defined in subsections (24) and (25) of this section.

(1.3) "Assembly" means a meeting of delegates of a political party, organized in accordance with the rules and regulations of the political party, held for the purpose of designating candidates for nominations.

(1.5) "Authorizing legislation" means the provisions of the state constitution or statutes or of a local charter authorizing the existence and powers of a political subdivision and providing for the call and conduct of the political subdivision's election.

(1.7) "Ballot" means the list of all candidates, ballot issues, and ballot questions upon which an eligible elector is entitled to vote at an election.

(2) "Ballot box" means the locked and sealed container in which ballots are deposited by eligible electors. The term includes the container in which ballots are transferred from a polling place to the office of the designated election official and the transfer case in which electronic ballot cards and paper tapes and the "prom" or any other electronic tabulation device are sealed by election judges for transfer to the central counting center.

(2.1) "Ballot card" means the card, tape, or other vehicle on which an elector's votes are recorded in an electronic or electromechanical voting system.

(2.3) "Ballot issue" means a state or local government matter arising under section 20 of article X of the state constitution, as defined in sections 1-41-102 (4) and 1-41-103 (4), respectively.

(2.5) "Ballot issue notice" means the notice which is required by section 20 (3) (b) of article X of the state constitution and comprises the material between the notice title and the conclusion of the summary of comments.

(2.7) "Ballot question" means a state or local government matter involving a citizen petition or referred measure, other than a ballot issue.

(3) (Deleted by amendment, L. 94, p. 1750, § 1, effective January 1, 1995.)

(4) (Deleted by amendment, L. 93, p. 1394, § 2, effective July 1, 1993.)

(5) "Congressional vacancy election" means an election held at a time other than the general election for the purpose of filling a vacancy in an unexpired term of a representative in congress.

(6) "Convention" means a meeting of delegates of a political party, organized in accordance with the rules and regulations of the political party, held for the purpose of selecting delegates to other political conventions, including national conventions, making nominations for presidential electors, or nominating candidates to fill vacancies in unexpired terms of representatives in congress or held for other political functions not otherwise covered in this code.

(6.5) "Coordinated election" means an election where more than one political subdivision with overlapping boundaries or the same electors holds an election on the same day and the eligible electors are all registered electors, and the county clerk and recorder is the coordinated election official for the political subdivisions.

(7) "County" includes a city and county.

(7.5) "Deliverable mailing address" means the elector's mailing address if different from the elector's address of record as specified in accordance with section 1-2-204 (2) (f).

(8) "Designated election official" means the member of a governing board, secretary of the board, county clerk and recorder, or other person designated by the governing body as the person who is responsible for the running of an election.

(9) "District captain" or "district co-captain" means any registered elector who is a resident of the district, is affiliated with a political party, and is designated or elected pursuant to political party rules of the county.

(9.5) "District office of state concern" means those elective offices, involving congressional districts or unique political subdivisions with territory in more than one county and with their own enabling legislation, as identified by rules of the secretary of state based upon the method for designating candidates for office and responsibility for identification and qualification of candidates.

(9.6) "Driver's license" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles and any identification card issued under part 4 of article 2 of title 42, C.R.S.

(10) "Election official" means any county clerk and recorder, election judge, member of a canvassing board, member of a board of county commissioners, member or secretary of a board of directors authorized to conduct public elections, representative of a governing body, or other person contracting for or engaged in the performance of election duties as required by this code.

(11) "Election records" includes but is not limited to accounting forms, certificates of registration, pollbooks, certificates of election, signature cards, all affidavits, mail-in voter applications, mail-in voter lists and records, mail-in voter return envelopes, voted ballots, unused ballots, spoiled ballots, and replacement ballots.

(12) "Elector" means a person who is legally qualified to vote in this state. The related terms "eligible elector", "registered elector", and "taxpaying elector" are separately defined in this section.

(13) "Elector registration information changes" means changes in the name, address, or political affiliation of a registered elector which are allowed by the provisions of this code.

(13.5) "Electromechanical voting system" means a system in which an elector votes using a device for marking a ballot card using ink or another visible substance and the votes are counted with electronic vote-tabulating equipment. The term includes a system in which votes are recorded electronically within the equipment on paper tape and are recorded simultaneously on an electronic device that permits tabulation at a counting center.

(14) "Electronic vote-tabulating equipment" or "electronic vote-counting equipment" means any apparatus that examines and records votes automatically and tabulates the result, including but not limited to optical scanning equipment. The term includes any apparatus that counts votes electronically and tabulates the results simultaneously on a paper tape within the apparatus, that uses an electronic device to store the tabulation results, and that has the capability to transmit the votes into a central processing unit for purposes of a printout and an official count.

(14.5) "Electronic voting device" means a device by which votes are recorded electronically, including a touchscreen system.

(15) Repealed.

(15.5) "Electronic voting system" means a system in which an elector votes using an electronic voting device.

(16) "Eligible elector" means a person who meets the specific requirements for voting at a specific election or for a specific candidate, ballot question, or ballot issue. If no specific provisions are given, an eligible elector shall be a registered elector, as defined in subsection (35) of this section.

(17) "General election" means the election held on the Tuesday succeeding the first Monday of November in each even-numbered year.

(18) "Governing body" means a board of county commissioners, a city council, a board of trustees, a board of directors, or any other entity which is responsible for the calling and conducting of an election.

(19) "Gubernatorial" means and refers to voting in general elections for the office of governor.

(19.5) (a) "Identification" means:

(I) A valid Colorado driver's license;

(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.;

(III) A valid United States passport;

(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;

(V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;

(VI) A valid United States military identification card with a photograph of the eligible elector;

(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;

(VIII) A valid medicare or medicaid card issued by the United States health care financing administration;

(IX) A certified copy of a birth certificate for the elector issued in the United States;

(X) Certified documentation of naturalization; or

(XI) A valid student identification card with a photograph of the eligible elector issued by an institution of higher education in Colorado, as defined in section 23-3.1-102 (5), C.R.S.

(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.

(20) "Joint candidates" means the two candidates for the office of governor and the office of lieutenant governor for whom one vote cast at any general election is applicable to both offices.

(21) (Deleted by amendment, L. 93, p. 1394, § 2, effective July 1, 1993.)

(22) "Major political party" means any political party that at the last preceding gubernatorial election was represented on the official ballot either by political party candidates or by individual nominees and whose candidate at the last preceding gubernatorial election received at least ten percent of the total gubernatorial votes cast.

(22.5) "Major political party affiliation" means an elector's decision to affiliate with a major political party, as defined in subsection (22) of this section.

(22.7) "Manual count" means a count conducted by hand or by scanning a bar code.

(23) "Minor political party" means a political party other than a major political party that satisfies one of the conditions set forth in section 1-4-1303 (1) or has submitted a sufficient petition in accordance with section 1-4-1302.

(23.3) "Nonpartisan election" means an election that is not a partisan election.

(23.4) "Overvote" means the selection by an elector of more names than there are persons to be elected to an office or the designation of more than one answer to a ballot question or ballot issue.

(23.6) "Partisan election" means an election in which the names of the candidates are printed on the ballot along with their affiliation. The existence of a partisan election for the state or for a political subdivision as a part of a coordinated election does not cause an otherwise nonpartisan election of another political subdivision to become a partisan election.

(24) "Political organization" means any group of registered electors who, by petition for nomination of an unaffiliated candidate as provided in section 1-4-802, places upon the official general election ballot nominees for public office.

(25) "Political party" means either a major political party or a minor political party.

(26) "Political party district" means an area within a county composed of contiguous whole election precincts, as designated by the political party county chairperson.

(27) "Pollbook" means the list of eligible electors who are permitted to vote at a polling place or by mail ballot in an election conducted under this code.

(28) "Polling place" means the place established for holding elections.

(29) "Population" means population as determined by the latest federal census.

(30) "Precinct" means an area with established boundaries within a political subdivision used to establish election districts.

(31) "Precinct caucus" means a meeting of registered electors of a precinct who are eligible to participate in accordance with the provisions of section 1-3-101, such meeting being organized in accordance with the rules and regulations of the political party.

(31.5) "Presidential election" means an election held on the first Tuesday after the first Monday in November of an even-numbered year in which the names of candidates for president of the United States appear on the ballot.

(32) "Primary election" means the election held on the second Tuesday of August in each even-numbered year.

(33) "Property owners list" means the list furnished by the county assessor in accordance with section 1-5-304 showing each property owner within the subdivision, as shown on a deed or contract of record.

(33.5) "Public assistance" includes, but is not necessarily limited to, assistance provided under the following programs:

(a) The food stamp program, as provided in part 3 of article 2 of title 26, C.R.S.;

(b) Programs established pursuant to the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.;

(c) The special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786;

(d) Assistance under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S.

(34) "Publication" means printing one time, in one newspaper of general circulation in the political subdivision if there is such a newspaper, and, if not, then in a newspaper in the county in which the political subdivision is located. For a political subdivision with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the political subdivision, then one publication is required in a newspaper in each county in which the political subdivision is located and in which the political subdivision also has fifty or more eligible electors.

(34.2) "Purchase" means to enter into a contract for the purchase, lease, rental, or other acquisition of voting equipment.

(34.5) "Referred measure" includes any ballot question or ballot issue submitted by the general assembly or the governing body of any political subdivision to the eligible electors of the state or political subdivision pursuant to article 40 or 41 of this title.

(35) "Registered elector" means an elector, as defined in subsection (12) of this section, who has complied with the registration provisions of this code and who resides within or is eligible to vote in the jurisdiction of the political subdivision calling the election. If any provision of this code requires the signing of any document by a registered elector, the person making the signature shall be deemed to be a registered elector if the person's name and address at the time of signing the document matches the name and address for the person on the registration document at the county clerk and recorder's office, and as it appears on the master elector list on file with the secretary of state.

(36) "Registration book" means the original elector registration records for each county retained and stored by one of the following methods:

(a) On registration records by precinct in bound books arranged alphabetically for all active and all inactive registrations with all withdrawn and canceled registrations kept in separate bound books or on film; or

(b) On film and computer with access to the registration records available both alphabetically and by precinct. The system shall have the capability to print out active and inactive registration records, to retain the voting history for each active and inactive registration by surname, and to film completed voter signature forms by precinct for each election. Computer lists of registration records shall be furnished for use at the precinct polling places on election days.

(37) "Registration list" means the computer list of electors currently registered to vote as furnished and certified by the county clerk and recorder.

(38) "Registration record" means the approved and completed form on which an elector has registered to vote, which includes the original signature of the registrant. "Registration record" includes a standard-size approved elector registration record to which a nonstandard completed form has been transferred by copy or manual entry.

(39) "Regular biennial school election" means the election held on the first Tuesday in November of each odd-numbered year.

(40) "Regular drainage ditch election" means the election held on the first Tuesday after the first Monday in January of each alternate year.

(41) "Regular regional transportation district election" means the election held concurrently with the state general election in every even-numbered year during which the directors are elected.

(42) "Regular special district election" means the election on the Tuesday succeeding the first Monday of May in every even-numbered year, held for the purpose of electing members to the board of special districts and for submission of ballot issues, if any.

(43) "Residence" means the principal or primary home or place of abode of a person, as set forth in section 1-2-102.

(44) (Deleted by amendment, L. 96, p. 1732, § 2, effective July 1, 1996.)

(45) "School district" means a school district organized and existing pursuant to law but does not include a junior college district.

(45.5) "Self-affirmation" means a sworn statement made in writing and signed by an individual, as though under oath. Any person falsely making a self-affirmation violates section 1-13-104.

(46) "Special election" means any election called by a governing board for submission of ballot issues and other matters, as authorized by their enabling legislation. Any governing body may petition a district court judge who has jurisdiction over the political subdivision for permission to hold a special election on a day other than those specified in this subsection (46). The district court judge may grant permission only upon a finding that an election on the days specified would be impossible or impracticable or upon a finding that an unforeseeable emergency would require an election on a day other than those specified.

(46.3) "Special legislative election" means an election called by the general assembly pursuant to part 3 of article 11 of this title.

(46.5) "Statewide abstract of votes cast" means the record of the results in each election for candidates, ballot issues, and ballot questions that the secretary of state certified for the ballot.

(47) "Supply judge" means the election judge appointed by the designated election official to be in charge of the election process at the polling place on election day.

(48) "Taxable property" means real or personal property subject to general ad valorem taxes. For all elections and petitions that require ownership of real property or land, ownership of a mobile home or manufactured home, as defined in section 5-1-301 (29), 38-12-201.5 (2), or 42-1-102 (106) (b), C.R.S., is sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(49) "Taxpaying elector" shall have the same meaning as provided in section 32-1-103 (23), C.R.S.

(49.5) "Unaffiliated" means that a person is registered but not affiliated with a political party in accordance with the provisions of section 1-2-204 (2) (j).

(49.7) "Undervote" means the failure of an elector to vote on a ballot question or ballot issue, the failure of an elector to vote for any candidate for an office, or the designation by an elector of fewer votes than there are offices to be filled; except that it is not an undervote if there are fewer candidates than offices to be filled and the elector designates as many votes as there are candidates.

(49.8) "Vote center" means a polling place at which any registered elector in the political subdivision holding the election may vote, regardless of the precinct in which the elector resides.

(50) "Vote recorder" or "voting device" means any apparatus that the elector uses to record votes by marking a ballot card and that subsequently counts the votes by electronic tabulating equipment or records the votes electronically on a paper tape within the apparatus and simultaneously on an electronic tabulation device.

(50.2) "Voter registration agency" means an office designated in section 1-2-504 to perform voter registration activities.

(50.4) "Voter registration drive" means the distribution and collection of voter registration applications by two or more persons for delivery to a county clerk and recorder.

(50.5) "Voter registration drive organizer" means a person, as defined in section 2-4-401 (8), C.R.S., that organizes a voter registration drive in the state.

(50.6) (a) "Voter-verified paper record" means an auditable paper record that:

(I) Is available for the elector to inspect and verify before the vote is cast;

(II) Is produced contemporaneously with or employed by any voting system;

(III) Lists the designation of each office, the number or letter of each ballot issue or ballot question, and the elector's choice for each office, ballot issue, or ballot question and indicates any office, ballot issue, or ballot question for which the elector has not made a selection;

(IV) Is suitable for a manual audit or recount; and

(V) Is capable of being maintained as an election record in accordance with the requirements of section 1-7-802.

(b) Any paper ballot that lists the title, along with any number, as applicable, of each candidate race, ballot issue, or ballot question, on which the elector has marked his or her choices in such races, issues, or questions shall constitute a voter-verified paper record for purposes of this subsection (50.6).

(50.7) "Voting equipment" means electronic or electromechanical voting systems, electronic voting devices, and electronic vote-tabulating equipment, as well as materials, parts, or other equipment necessary for the operation and maintenance of such systems, devices, and equipment.

(50.8) "Voting system" means a process of casting, recording, and tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures for casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.

(50.9) "Voting system provider" means an individual engaged in private enterprise or a business entity engaged in selling, leasing, marketing, designing, building, or modifying voting systems to the state, a political subdivision of the state, or another entity authorized to hold an election under this code.

(51) "Watcher" means an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder.

Source: L. 92: Entire article R&RE, p. 625, § 1, effective January 1, 1993. L. 93: (4), (11), (16), (21), (28), (39), (46), (49), and (51) amended and (2.3), (2.7), and (6.5) added, p. 1394, § 2, effective July 1; (11) amended, p. 58, § 1, effective July 1. L. 94: (48) amended, p. 704, § 3, effective April 19; (2.3), (2.7), (8), (34), and (35) amended and (2.5), (9.5), and (34.5) added, p. 1149, § 2, effective July 1; (3), (37), and (38) amended and (9.6), (33.5), and (50.5) added, p. 1750, § 1, effective January 1, 1995; (48) amended, p. 2541, § 6, effective January 1, 1995. L. 95: (23.3), (23.6), and (49.5) added and (24), (33), (37), and (51) amended, pp. 819, 860, 863, §§1, 113, 125, effective July 1. L. 96: (12), (44), and (49) amended and (1.5) and (45.5) added, p. 1732, § 2, effective July 1. L. 97: (33.5)(d) amended, p. 1239, § 33, effective July 1. L. 98: (22), (23), and (25) amended, p. 255, § 2, effective April 13. L. 99: (37) amended, p. 756, § 1, effective May 20; (46.5) added, p. 1389, § 5, effective June 4; (1) amended and (1.3), (1.7), and (46.5) added, p. 477, § 1, effective July 1; (1) amended and (1.3), (22.5), and (23.6) added, p. 157, § 1, effective August 4; (1) amended and (1.3) and (7.5) added, p. 278, § 1, effective August 4. L. 2000: (48) amended, p. 1870, § 100, effective August 2. L. 2003: (32) amended, p. 495, § 1, effective March 5; (1.3) and (23) amended, p. 1308, § 1, effective April 22; (19.5) added, p. 1276, § 1, effective April 22; (19.5) added, p. 1437, § 1, effective April 29; (19.5)(a)(II), (19.5)(a)(V),

and (19.5)(a)(VI) amended and (19.5)(a)(VII) added, p. 2064, § 1, effective May 22. **L. 2004:** (19.5)(a)(I) and (19.5)(a)(V) amended, p. 426, § 1, effective April 13; (19.5)(a)(V) amended and (19.5)(a)(VIII), (19.5)(a)(IX), and (19.5)(a)(X) added, p. 1051, § 1, effective May 21; (49.8) added, p. 1104, § 1, effective May 27; (2.1), (13.5), (14.5), (15.5), (23.4), (34.2), (49.7), (50.7), (50.8), and (50.9) added and (14) and (27) amended, p. 1342, § 2, effective May 28 and (50) amended, p. 1343, § 3, effective January 1, 2006; (15)(b) added by revision, pp. 1361, 1213, §§ 30, 31, 108. **L. 2005:** (22.7), (50.2), (50.4), and (50.6) added and (50.5) amended, p. 1392, § 1, effective June 6; (22.7), (50.2), (50.4), and (50.6) added and (50.5) amended, p. 1427, § 1, effective June 6. **L. 2006:** (33.5)(b) amended, p. 1997, § 28, effective July 1. **L. 2007:** (11) amended, p. 1775, § 1, effective June 1; (19.5)(a)(XI) added and (50.6)(a)(III) amended, p. 1967, §§ 1, 2, effective August 3; (31.5) added, p. 1988, § 1, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-104 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

(2) Amendments to subsection (11) by House Bill 93-1111 and House Bill 93-1255 were harmonized.

(3) Amendments to subsection (48) by House Bill 94-92 and House Bill 94-1 were harmonized.

(4) Subsection (9.6) was originally enacted as (9.5), by House Bill 94-1294, Session Laws of Colorado 1994, chapter 294, section 1, but was renumbered on revision for ease of location.

(5) Subsection (1.1) was originally numbered as (1) in House Bill 99-1082 but has been renumbered on revision for ease of location; subsection (1.2) was originally numbered as (1) in House Bill 99-1152 but has been renumbered on revision for ease of location; and subsection (46.3) was originally numbered as (46.5) in House Bill 99-1097 but has been renumbered on revision for ease of location.

(6) Amendments to subsection (19.5) by House Bill 03-1241 and Senate Bill 03-102 were harmonized.

(7) (a) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing subsection (15) takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for said subsection (15). For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(b) Subsection (15)(b) provided for the repeal of subsection (15), effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

(8) Subsections (19.5)(a)(XI), (31.5), and (50.6)(a)(III) were contained in 2007 acts that were passed without safety clauses. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the legislative declaration contained in the 2004 act enacting subsections (2.1), (13.5), (14.5), (15.5), (23.4), (34.2), (49.7), (50.7), (50.8), and (50.9), amending subsections (14), (27), and (50), and repealing subsection (15), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

I. Political Organization and Political Party.

II. Taxpaying Elector.

I. POLITICAL ORGANIZATION AND POLITICAL PARTY.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Distinction made between "political party" and "political organization". In common use the phrase "political party" is synonymous with "political organization", but the general assembly by this section has made a marked distinction between them. *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

"Political organization" defined. An association of qualified electors who, by petition, place upon an official ballot individual nominees for public office constitute a "political organization". *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

As a condition precedent for such a "political organization" to become a "political party" within the statutory definition, it shall participate in an election, and, in addition thereto, cast for its candidate for governor at

least ten percent of the total vote cast at such election. When these things occur, the "political organization" becomes a "political party". *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

If a person is the candidate solely of one "political party" or a single "political organization", the votes which he receives at a given election are conclusively presumed to have been cast by the particular party or organization whose candidate he is. *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

But if a person is the candidate of two or more "political parties" or "political organizations", no such presumption can exist. *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

Thus, where distinct political organizations, under different names, present the same individual as their candidate for governor, the votes cast by all these several organizations for the same candidate are not to be considered as cast by any one "party", as such is not conditioned upon the number of votes which the candidate received, but upon the number an organization itself cast. *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

For a political organization is a distinct entity which can neither coalesce with another, nor lose its identity therein by the mere fact that its candidates,

principles, and management are the same. *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

Evidence that organizations voting for same person were but one organization under different names held inadmissible. *Clements v. People ex rel. Lee*, 58 Colo. 105, 143 P. 834 (1914).

II. TAXPAYING ELECTOR.

The phrases "taxpaying elector" and "qualified taxpaying elector" describe situations in which payment of a property tax is an additional qualification for voting. *Sheldon v. Moffat Tunnel Comm'n*, 335 F. Supp. 251 (D. Colo. 1971).

However, these phrases are not used in connection with general elections. *Sheldon v. Moffat Tunnel Comm'n*, 335 F. Supp. 251 (D. Colo. 1971).

Only taxpaying electors entitled to vote on municipal bond issue. In an election on a municipal bond issue, it is clear that under this subsection only those electors who paid, or were obligated to pay, taxes on real or personal property subject to the mill levy of the municipality are eligible to vote. *City of Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

And in such a case, the tax on real or personal property unquestionably means a tax on property which is subject to the mill levy of the city. *City of Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

Hence, county taxpayers cannot vote in municipal elections. Registered electors of the city who paid taxes in the county, but who did not pay taxes on property in the city, do not have the right to vote on the question of the erection of a municipal electric light plant. *City of Loveland v. W. Light & Power Co.*, 65 Colo. 55, 173 P. 717 (1918).

Moreover, a person who owns property which is assessed in the name of another is not a "taxpaying elector" qualified to vote in a municipal bond election. *City of Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

Nor is a purchaser of realty under contract of sale. *City of Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

As ownership of property in and of itself is insufficient to qualify a citizen to vote, the property owned must in fact be "assessed to" him upon the assessment rolls of the county. *City of Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

"Taxpaying elector" also must be registered. In a municipal bond election a person who possesses all qualifications as to ownership and assessment of property is nevertheless not entitled to vote over the objection that he is not registered. *City of Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

1-1-105. Elections conducted pursuant to provisions which refer to qualified electors. Any election, and any acts relating thereto, including but not limited to elections under this code, the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S., school elections under title 22, C.R.S., and special district elections under title 32, C.R.S., which were conducted prior to July 1, 1987, pursuant to provisions which refer to a qualified elector rather than a registered elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

Source: L. 92: Entire article R&RE, p. 631, § 1, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992 and 1980. This section, as it existed in 1992, is the same as 1-1-104.5 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-1-106. Computation of time. (1) Calendar days shall be used in all computations of time made under the provisions of this code.

(2) In computing any period of days prescribed by this code, the day of the act or event from which the designated period of days begins to run shall not be included and the last day shall be included. Saturdays, Sundays, and legal holidays shall be included, except as provided in subsection (4) of this section.

(3) If a number of months is to be computed by counting the months from a particular day, the period shall end on the same numerical day in the concluding month as the day of the month from which the computation is begun; except that, if there are not that many days in the concluding month, the counting period shall end on the last day of the concluding month.

(4) If the last day for any act to be done or the last day of any period is a Saturday, Sunday, or legal holiday and completion of such act involves a filing or other action during business hours, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

(5) If the state constitution or a state statute requires doing an act in "not less than" or "no later than" or "at least" a certain number of days or "prior to" a certain number of days or a certain number of months "before" the date of an election, or any phrase that suggests a similar meaning, the period is shortened to and ends on the prior business day that is not a Saturday, Sunday, or legal holiday, except as provided in section 1-2-201 (3).

Source: **L. 92:** Entire article R&RE, p. 631, § 1, effective January 1, 1993. **L. 93:** (5) amended, p. 1395, § 3, effective July 1. **L. 95:** (2) and (5) amended, p. 820, § 2, effective July 1. **L. 96:** (5) amended, p. 1773, § 76, effective July 1. **L. 99:** (4) and (5) amended, p. 756, § 2, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-105 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

Cross references: For computation of time under the statutes generally, see § 2-4-108.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section shall be used in all computations

of time made under the provisions of the elections statutes which relate to general, primary, and special (now congressional vacancy) elections. *Ray v. Mickelson*, 196 Colo. 325, 584 P.2d 1215 (1978).

1-1-107. Powers and duties of secretary of state - penalty. (1) In addition to any other duties prescribed by law, the secretary of state has the following duties:

(a) To supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections in this state;

(b) To enforce the provisions of this code;

(c) With the assistance and advice of the attorney general, to make uniform interpretations of this code;

(d) To coordinate the responsibilities of the state of Colorado under the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg;

(e) To serve as the chief state election official within the meaning of the federal "Help America Vote Act of 2002", P.L. No. 107-252, and, in that capacity, to coordinate the responsibilities of the state of Colorado under the federal act in accordance with the requirements of this code.

(2) In addition to any other powers prescribed by law, the secretary of state shall have the following powers:

(a) To promulgate, publish, and distribute, either in conjunction with copies of the election laws pursuant to section 1-1-108 or separately, such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws, including but not limited to rules establishing the amount of fees as provided in this code;

(b) To inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, election commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state;

(c) To employ, subject to section 13 of article XII of the state constitution, the personnel deemed necessary to efficiently carry out the powers and duties prescribed in this code;

(d) To enforce the provisions of this code by injunctive action brought by the attorney general in the district court for the judicial district in which any violation occurs.

(3) Repealed.

(4) Any other provision of law to the contrary notwithstanding, the office of the secretary of state, or the section or division administering the election laws of this state pursuant to this section, shall be open and available to the election officials and employees of the various political subdivisions

conducting elections on each election day during the same hours that the polls are open for voting if the political subdivision has notified the office of the secretary of state that an election has been called and that the services of the office are desired.

(5) The provisions of this section are enacted, pursuant to section 11 of article VII of the state constitution, to secure the purity of elections and to guard against the abuses of the elective franchise.

(6) Repealed.

(7) No person while serving in the office of secretary of state shall serve as the highest ranking official, whether actual or honorary, in the campaign of any candidate for federal or statewide office. This subsection (7) shall not apply to a campaign in which the secretary of state is the candidate.

Source: **L. 92:** Entire article R&RE, p. 632, § 1, effective January 1, 1993. **L. 93:** (1)(a) amended, p. 1395, § 4, effective July 1. **L. 94:** (1)(d) added, p. 1751, § 2, effective January 1, 1995. **L. 95:** (6) added, p. 179, § 1, effective April 7. **L. 96:** (3) repealed, p. 1775, § 84, effective July 1. **L. 98:** (2)(a) amended, p. 1317, § 3, effective June 1. **L. 2001:** (6) amended, p. 518, § 6, effective January 1, 2002. **L. 2003:** (1)(e) added and (6) repealed, p. 2065, §§ 2, 3, effective May 22. **L. 2005:** (7) added, p. 1393, § 2, effective June 6; (7) added, p. 1428, § 2, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-106, as it existed in 1980, was similar to 1-1-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 93, 94.

1-1-108. Copies of election laws and manual provided. (1) No later than sixty days after each adjournment of the general assembly, the secretary of state shall transmit to the county clerk and recorder of each county a complete, updated copy of the pertinent sections of the election laws of the state.

(2) No later than January 15 in even-numbered years, the division of local government in the department of local affairs shall transmit to the designated election official of each special district organized under article 1 of title 32, C.R.S., entitled to hold elections or, if there is no designated election official, to the chief executive officer of the special district, at least one copy of the election laws. The designated election officials or chief executive officers of those special districts may request additional copies of the election laws.

Source: **L. 92:** Entire article R&RE, p. 633, § 1, effective January 1, 1993. **L. 93:** (1) amended, p. 1395, § 5, effective July 1. **L. 95:** Entire section amended, p. 820, § 3, effective July 1. **L. 96:** Entire section amended, p. 1733, § 3, effective July 1. **L. 99:** (1) amended, p. 757, § 3, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-107, as it existed in 1980, was similar to 1-1-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-1-109. Forms prescribed. (1) Except as otherwise provided by this code, the secretary of state shall approve all forms required by this code, which forms shall be followed by county clerk and recorders, election judges, and other election officials.

(2) A registered elector shall make elector registration information changes on an approved form, and the elector registration information changes shall be entered on the elector's registration record and retained and stored in a registration book, as provided for in section 1-1-104 (36).

Source: **L. 92:** Entire article R&RE, p. 633, § 1, effective January 1, 1993. **L. 96:** (1) amended, p. 1733, § 4, effective July 1. **L. 2003:** (1) amended, p. 2065, § 4, effective May 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-108, as it existed in 1980, was similar to 1-1-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-183. **C.J.S.** See 29 C.J.S., Elections, § 63.

1-1-110. Powers of the county clerk and recorder and deputy. (1) The county clerk and recorder, in rendering decisions and interpretations under this code, shall consult with the secretary of state and follow the rules and orders promulgated by the secretary of state pursuant to this code.

(2) All powers and authority granted to the county clerk and recorder by this code may be exercised by a deputy clerk in the absence of the county clerk and recorder or if the county clerk and recorder for any reason is unable to perform the required duties.

(3) As the chief election official for the county, the county clerk and recorder shall be the chief designated election official for all coordinated elections.

(4) (a) For any elector registered after August 4, 1999, any communication by mail from the county clerk and recorder to any registered elector pursuant to this title, including, but not limited to, a voter information card provided pursuant to section 1-5-206 or an elector information card provided pursuant to section 1-2-605, shall be sent to the elector's address of record unless the elector has requested that said communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k).

(b) For any elector registered as of August 4, 1999, who has provided the county clerk and recorder both an address of record and a deliverable mailing address but has not indicated a mailing preference, any communication by mail from the county clerk and recorder to any registered elector pursuant to this title, including, but not limited to, a voter information card provided pursuant to section 1-5-206 or an elector information card provided pursuant to section 1-2-605, shall be sent to the elector's deliverable mailing address.

Source: **L. 92:** Entire article R&RE, p. 634, § 1, effective January 1, 1993. **L. 93:** (3) amended, p. 1396, § 6, effective July 1. **L. 96:** (3) amended, p. 1734, § 5, effective July 1. **L. 99:** (4) added, p. 279, § 2, effective August 4. **L. 2003:** (1) amended, p. 2065, § 5, effective May 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-109 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-109, as it existed in 1980, was similar to 1-1-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 93, 94.

C.J.S. See 29 C.J.S., Elections, § 109.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (3) governs the timeliness of the filing of an annexation petition pursuant to § 30-6-105 and language of notification requirement in this section is mandatory and thus county board of commissioners is without discretion to shorten notice period. *Sellers v. Bd. of County Comm'rs*, 682 P.2d 509 (Colo. App. 1984).

1-1-111. Powers and duties of governing boards. (1) In addition to any other duties prescribed by law, the governing board of a political subdivision entitled to call elections shall have the following duties:

(a) To supervise the conduct of regular and special elections which it is authorized or required to call; and

(b) Where appropriate, to consult and coordinate with the county clerk and recorder of the county in which the political subdivision is located and with the secretary of state in regard to conducting elections and rendering decisions and interpretations under this code.

(2) All powers and authority granted to the governing board of a political subdivision may be exercised by an election official designated by the board. The governing body may also contract with the county clerk and recorder of the county in which the political subdivision is organized to perform all or part of the required duties in conducting the election.

(3) Elections which are set for the same date by various political subdivisions may be held as coordinated elections if the governing bodies so choose. Political subdivisions are authorized to cooperate and contract with each other to perform any function relating to an election.

Source: **L. 92:** Entire article R&RE, p. 634, § 1, effective January 1, 1993. **L. 93:** (3) amended, p. 1396, § 7, effective July 1. **L. 94:** (2) amended, p. 1150, § 3, effective July 1. **L. 96:** (3) amended, p. 1734, § 6, effective July 1.

Cross references: For violation of duty and penalty therefor, see § 1-13-107.

1-1-112. Powers and duties of election commission. The election commission in counties having a commission shall have all the powers and jurisdiction and perform all the duties provided by this code in respect to county clerk and recorders and boards of county commissioners.

Source: **L. 92:** Entire article R&RE, p. 635, § 1, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-1-110 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-110, as it existed in 1980, was the same as 1-1-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 93-96.

C.J.S. See 29 C.J.S., Elections, § 107.

1-1-113. Neglect of duty and wrongful acts - procedures for adjudication of controversies - review by supreme court. (1) When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person

charged to forthwith perform the duty or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner.

(2) The petitioner shall be required to deposit in court the statutory witness fees pursuant to section 13-33-102, C.R.S., for each person cited or summoned into court as a party or a witness, to be paid to the party or witness if the charge is not sustained. The money so deposited shall be returned to the party depositing it if any of the charges are sustained.

(3) The proceedings may be reviewed and finally adjudicated by the supreme court of this state, if either party makes application to the supreme court within three days after the district court proceedings are terminated, unless the supreme court, in its discretion, declines jurisdiction of the case. If the supreme court declines to review the proceedings, the decision of the district court shall be final and not subject to further appellate review.

(4) Except as otherwise provided in this part 1, the procedure specified in this section shall be the exclusive method for the adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election.

(5) Notwithstanding any other provision of law, the procedures specified in section 1-1.5-105 shall constitute the exclusive administrative remedy for a complaint arising under title III of the federal "Help America Vote Act of 2002", P.L. No. 107-252.

Source: **L. 92:** Entire article R&RE, p. 635, § 1, effective January 1, 1993. **L. 93:** (1) amended, p. 1396, § 8, effective July 1. **L. 94:** (2) amended and (4) added, p. 1151, § 4, effective July 1. **L. 2003:** (5) added, p. 2065, § 6, effective May 22. **L. 2007:** (3) amended, p. 1968, § 3, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-1-111 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-1-111, as it existed in 1980, was similar to 1-12-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (3) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: (1) For violation of duty and penalty therefor, see § 1-13-107.

(2) For the "Help America Vote Act of 2002", see Pub.L. No. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

ANNOTATION

- I. General Consideration.
- II. District Court to Decide.
- III. Review by Supreme Court and Court of Appeals.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § 292.

C.J.S. See 29 C.J.S., Elections, §§ 120-122, 549.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Authority of courts to determine election controversies when no candidate declared duly elected. State constitutional provisions and statutes permitting general assembly to judge election of members does not limit subject matter jurisdiction of district court to hear controversies related to elections where no candidate is yet declared duly elected by secretary of state. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993) (decided under former § 1-1-112).

A 42 U.S.C. § 1983 claim of deprivation of rights, privileges, or immunities secured by the federal constitution or federal law may be litigated under this section if the claim arises out of the same transaction or occurrence as the state law claims. Brown v. Davidson, __ P.3d __ (Colo. App. 2006).

Attorney fees should be awarded to a plaintiff pursuant to 42 U.S.C. § 1988 if the plaintiff's victory on a nonconstitutional claim prevents the court from reaching a substantial constitutional claim that arises out of a common nucleus of operative facts. Brown v. Davidson, __ P.3d __ (Colo. App. 2006).

Plaintiffs made a substantial constitutional claim, which is a claim that is not without merit, wholly frivolous, or barred by prior supreme court decisions, when they alleged that a state statute that requires unaffiliated candidates for the office of president and vice president of the United States to file candidate statements of intent nearly two months before statutory filing deadlines for affiliated candidates placed unequal burdens on unaffiliated candidates in violation of the first and fourteenth amendments to the U.S. Constitution. Brown v. Davidson, __ P.3d __ (Colo. App. 2006).

II. DISTRICT COURT TO DECIDE.

The court is given jurisdiction for the purpose of enforcing a substantial compliance with the provisions of election act by the parties to such controversy. People ex rel. McGaffey v. Dist. Court, 23 Colo. 150, 46 P. 681 (1896).

And provision for adjudication of controversies, being remedial in character, must be liberally construed in order that its purpose may be given effect. People v. Dist. Court, 23 Colo. 150, 46 P. 681 (1896).

The district court has jurisdiction to order the recognition by a state central committee of one who is admittedly a member of that body. People ex rel. Vick Roy v. Republican State Cent. Comm., 75 Colo. 312, 226 P. 656 (1924).

And it has jurisdiction to determine authority of the secretary of state. Where the secretary of state assumes jurisdiction, deciding a dispute, and the defeated party applies to the district court for relief, challenging the authority of the secretary to determine the controversy as well as the correctness of his decision upon the merits, the district court has jurisdiction to entertain the cause and

determine the matter. People ex rel. McGaffey v. Dist. Court, 23 Colo. 150, 46 P. 681 (1896).

The provision for adjudication of controversies contemplates the taking of evidence where the issues require it. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897).

III. REVIEW BY SUPREME COURT AND COURT OF APPEALS.

The provision for adjudication of controversies does not confer original jurisdiction on the supreme court. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897).

Supreme court may in its discretion accept or reject an appeal with respect to nominations of candidates, and if it elects to accept the appeal, it may proceed in a summary way to dispose of it. In re Weber, 186 Colo. 61, 525 P.2d 465 (1974).

Court of appeals obtains jurisdiction to hear an appeal under this section if the supreme court declines to exercise its initial jurisdiction. Brown v. Davidson, ___ P.3d ___ (Colo. App. 2006).

1-1-114. Registration deadline. (Repealed)

Source: L. 92: Entire article R&RE, p. 635, § 1, effective January 1, 1993. L. 93: Entire section amended, p. 1396, § 9, effective July 1. L. 94: Entire section amended, p. 1751, § 3, effective January 1, 1995. L. 95: Entire section amended, p. 820, § 4, effective July 1. L. 96: Entire section repealed, p. 1775, § 84, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992 and 1980. This section, as it existed in 1992, is the same as 1-1-113 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

PART 2

TERMS OF OFFICE

1-1-201. Commencement of terms - state, congressional district, and county officers. The regular terms of office of all state, congressional district, and county officers shall commence on the second Tuesday of January next after their election, except as otherwise provided by law.

Source: L. 92: Entire article R&RE, p. 636, § 1, effective January 1, 1993. L. 93: Entire section amended, p. 1397, § 10, effective July 1.

1-1-202. Commencement of terms - nonpartisan officers. The regular terms of office of all nonpartisan officers elected at regular elections shall commence at the next meeting of the governing body following the date of the election, but no later than thirty days following the survey of returns and upon the signing of an oath and posting of a bond, where required, unless otherwise provided by law. If the election is cancelled in whole or in part pursuant to section 1-5-208 (1.5), then the regular term of office of a nonpartisan officer shall commence at the next meeting of the governing body following the date of the regular election, but no later than thirty days following the date of the regular election and upon the signing of an oath and posting of a bond, where required, unless otherwise provided by law.

Source: L. 92: Entire article R&RE, p. 636, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1397, § 11, effective July 1. **L. 94:** Entire section amended, p. 1151, § 5, effective July 1. **L. 2001:** Entire section amended, p. 1001, § 1, effective August 8.

1-1-203. End of the term. A person elected or appointed to an office shall hold office until the successor is elected, qualified, and takes office on the second Tuesday of January, unless otherwise provided by law.

Source: L. 92: Entire article R&RE, p. 636, § 1, effective January 1, 1993. **L. 93:** Entire section amended, p. 1397, § 12, effective July 1.

PART 3

TRAINING AND CERTIFICATION OF ELECTION OFFICIALS

1-1-301. Certification program. (1) The secretary of state shall establish and operate or provide by contract a certification program for local election officials on the conduct of elections, the federal "Help America Vote Act of 2002", P.L. No. 107-252, codified at 42 U.S.C. sec. 15301 et seq., and other topics related to elections.

(2) The secretary of state shall establish by rule a curriculum for the certification program, including core requirements and electives, the required number of hours, and methods for continuing education.

(3) The secretary of state shall provide staffing and support services for the certification program.

(4) The secretary of state shall appoint an advisory board to oversee the certification process and the development of the curriculum.

Source: L. 2005: Entire part added, p. 1393, § 3, effective June 6; entire part added, p. 1428, § 3, effective June 6.

1-1-302. Persons required to complete certification - deadline. (1) The following persons shall obtain certification in accordance with this part 3:

(a) The county clerk and recorder;

(b) Employees in the clerk and recorder's office who are directly responsible for overseeing elections; and

(c) Other employees in the clerk and recorder's office at the discretion of the clerk and recorder.

(2) A person required to obtain certification shall:

(a) (Deleted by amendment, L. 2006, p. 2030, § 6, effective June 6, 2006.)

(b) Complete the certification requirements within two years of undertaking the responsibilities for which the person is required to obtain certification; and

(c) Comply with the continuing education requirements prescribed by the secretary of state by rule.

(3) Nothing in this section shall be construed to require an elected official to attend a course of instruction or obtain a certification as a condition for seeking or holding elective office or as a condition for carrying out constitutional and statutory duties.

Source: L. 2005: Entire part added, p. 1394, § 3, effective June 6; entire part added, p. 1429, § 3, effective June 6. **L. 2006:** (2)(a) and (2)(b) amended, p. 2030, § 6, effective June 6.

1-1-303. Certification courses. (1) The curriculum for certification in accordance with this part 3 shall include courses in the following areas:

- (a) General election law;
 - (b) The federal "Help America Vote Act of 2002"; and
 - (c) Professional development.
- (2) The secretary of state shall offer certification courses at least annually.

Source: L. 2005: Entire part added, p. 1394, § 3, effective June 6; entire part added, p. 1429, § 3, effective June 6.

Cross references: For the "Help America Vote Act of 2002", see P.L. No. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

ARTICLE 1.5

Help America Vote Act

Cross references: For the "Help America Vote Act of 2002", see Pub.L. No. 107-252, codified at 42 U.S.C. sec. 15301 et seq.

1-1.5-101.	Legislative declaration.	1-1.5-105.	Complaint procedure.
1-1.5-102.	Definitions.	1-1.5-106.	Federal elections assistance fund - match requirements - maintenance of effort - grants and loans to counties.
1-1.5-103.	Conflict with federal law.		
1-1.5-104.	Powers and duties of secretary of state.		

1-1.5-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The "Help America Vote Act of 2002", P.L. No. 107-252, was passed by the United States congress and signed into law by president George W. Bush on October 29, 2002.

(b) HAVA resulted from a national consensus that the nation's electoral system needs improvements to ensure that every eligible voter has the opportunity to vote, that every vote that should be counted will be counted, and that no legal vote will be canceled by a fraudulent vote.

(c) HAVA clearly defines the rights and privileges of those eligible individuals who seek to vote, including all overseas and military service voters, and seeks to prevent disenfranchisement resulting from mistaken determinations of ineligibility to vote, the use of outdated voting systems that are unreliable or insufficiently accessible for disabled voters, or unnecessary administrative obstacles.

(d) To achieve these purposes, HAVA authorizes significant amounts of federal financial assistance to the states to finance the purchase of more reliable voting systems and mandates changes in the conduct of federal elections in all states for the purposes of ensuring greater access to the polls by individuals with disabilities, providing more information to individuals who wish to vote, improving the training of poll workers, and reducing the possibility of fraud in the electoral process.

(e) As a condition of the receipt of certain funds from the federal government under HAVA, section 253 (b) (5) of HAVA requires the states to appropriate funds for carrying out the activities for which such payments are made in an amount equal to five percent of the total amount to be spent for such activities.

(f) HAVA empowers the United States department of justice to bring civil actions seeking such declaratory and injunctive relief as may be necessary to carry out uniform and nondiscriminatory election technology and administration requirements. Accordingly, failure to satisfy the requirements of HAVA may subject election laws and procedures of this state to stringent review and approval by the United States department of justice.

(g) In order that its requirements may be effectively and uniformly implemented, HAVA mandates a greater role for the state governments and, in particular, the chief election official of each state, in overseeing and coordinating elections and in enforcing and implementing uniform standards in elections.

(h) In Colorado, the secretary of state is the chief state election official and, in that capacity, is charged by HAVA and existing state statutory provisions with responsibility for supervising the conduct of elections and for enforcing and implementing the provisions of HAVA and of this code.

(2) Now, therefore, by enacting this article, the general assembly intends to:

(a) Begin the process of implementing the changes in this code that are required by HAVA;

(b) Ensure the timely fulfillment by the state of all requirements for eligibility under HAVA to be able to receive appropriated federal funds under HAVA; and

(c) Provide the secretary of state with sufficient authority to ensure that the state of Colorado is fully compliant with all requirements imposed upon it pursuant to HAVA.

(3) The general assembly further intends that this article be liberally construed to effectuate its purposes as expressed in this section.

Source: L. 2003: Entire article added, p. 2065, § 7, effective May 22.

1-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Department" means the Colorado department of state.
- (2) "Fund" means the federal elections assistance fund created in section 1-1.5-106.
- (3) "HAVA" means the federal "Help America Vote Act of 2002", P.L. No. 107-252, codified at 42 U.S.C. sec. 15301 et seq.
- (4) "Secretary" means the Colorado secretary of state.

Source: L. 2003: Entire article added, p. 2067, § 7, effective May 22. **L. 2004:** (3) amended, p. 1186, § 1, effective August 4.

1-1.5-103. Conflict with federal law. If the secretary or a court of competent jurisdiction determines there is a conflict between this article or any other provision of this code and any provision of HAVA, the provisions of HAVA and any rules promulgated thereunder shall control, and the secretary shall perform the duties and discharge the obligations contained in the federal act. If such a determination is made, the secretary shall submit a report to the general assembly explaining the conflict and suggesting language to change this article in the next legislative session.

Source: L. 2003: Entire article added, p. 2067, § 7, effective May 22.

1-1.5-104. Powers and duties of secretary of state. (1) The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA to be eligible on a timely basis for all federal funds made available to the state under HAVA, including, without limitation, the power and duty to:

- (a) Develop and require education and training programs and related services for state, county, and local election officials involved in the conduct of elections;
- (b) Promulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title;
- (c) Establish a uniform administrative complaint procedure in accordance with the requirements of section 1-1.5-105;
- (d) Issue appropriate orders to county or local election officials in connection with the proper administration, implementation, and enforcement of the federal act, which orders shall be enforceable in a court of competent jurisdiction;
- (e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article; and
- (f) Exercise any other powers or perform any other duties that are consistent with this article and that are reasonably necessary for the proper administration, implementation, and enforcement of HAVA and that will improve the conduct of elections in the state in conformity with HAVA.

(2) (a) Acting either upon his or her own initiative or upon a complaint submitted to him or her giving the secretary reasonable grounds to believe that an election in this state is not being conducted in accordance with the requirements of HAVA or of this code, the secretary may investigate the allegation of noncompliance. In connection with such an investigation, the secretary may:

- (I) Compel the testimony of witnesses and the production of documents from any state, county, or local official involved in the conduct of the election; and

(II) Send one or more official election observers to any county in the state to examine the conduct of any aspect of any election giving rise to the allegation of noncompliance. The clerk and recorder of the county in which the allegation of noncompliance arises shall assume the costs associated with the travel and other expenses of any observers sent to the county pursuant to this subparagraph (II) where the secretary has reasonable grounds to believe that the election is not being conducted in accordance with the requirements of HAVA or of this code.

(b) In order to satisfy the requirements of this subsection (2), the secretary may require that each county designate not less than three persons experienced in the conduct of elections to form a pool of official election observers.

(3) With the exception of a complaint brought under section 1-1.5-105 to remedy an alleged violation of HAVA, any interested party that has reasonable grounds to believe that an election is not being conducted in conformity with the requirements of this code may apply to the district court in the judicial district in which the allegation of noncompliance arises for an order giving the secretary access to all pertinent election records used in conducting the election and requesting the secretary to conduct the election.

(4) The secretary shall seek the full amount of funds available to the state under HAVA for distribution to the counties in accordance with HAVA.

Source: L. 2003: Entire article added, p. 2067, § 7, effective May 22. L. 2005: (4) added, p. 1394, § 4, effective June 6; (4) added, p. 1429, § 4, effective June 6.

1-1.5-105. Complaint procedure. (1) Subject to the requirements of this section, in accordance with section 402 of HAVA, the secretary may establish by rule a uniform administrative complaint procedure to remedy grievances brought under title III of HAVA.

(2) Any rules promulgated pursuant to subsection (1) of this section shall provide for, but need not be limited to, the following:

(a) A uniform and nondiscriminatory complaint procedure;

(b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a complaint;

(c) A description by the complainant in his or her complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;

(d) A requirement that the complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later;

(e) A requirement that each complaint be in writing and notarized, signed, and sworn by the person filing the complaint;

(f) Authorization for the secretary to consolidate two or more complaints;

(g) At the request of the complainant, a hearing on the record;

(h) Authorization for the secretary to provide an appropriate remedy if the secretary determines that any provision of title III of HAVA has been violated or to dismiss the complaint and publish the results of his or her review if the secretary determines that no provision of title III of HAVA has been violated;

(i) A final determination on the complaint by the secretary prior to the expiration of the ninety-day period that begins on the date the complaint is filed, unless the complainant consents to an extension of time for making such determination;

(j) Resolution of the complaint within sixty days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the requirements of this section if the secretary fails to satisfy the applicable deadline specified in paragraph (i) of this subsection (2), and the availability of the record and any other materials from any proceedings conducted under the complaint procedures established for use under such alternative dispute resolution procedures;

(k) Authorization for the secretary to conduct a preliminary review of any complaint submitted to him or her and to dismiss any complaint that he or she finds is not supported by credible evidence; and

(l) Recovery by the secretary of the costs of the proceeding against any complainant who files a complaint that, in connection with the final determination by the secretary pursuant to paragraph (i) of this subsection (2), is found, on the basis of clear and convincing evidence, to be frivolous, groundless, or vexatious.

(3) Notwithstanding any other provision of law:

(a) No complaint shall be brought pursuant to the procedure created by this section unless the complaint alleges a violation of title III of HAVA;

(b) Proceedings for the resolution of a complaint brought pursuant to this section shall not be considered an adjudication under article 4 of title 24, C.R.S.; and

(c) The procedures created by this section shall constitute the exclusive administrative remedy for a violation of title III of HAVA.

(4) Any person aggrieved by a final determination by the secretary acting pursuant to paragraph (i) of subsection (2) of this section may appeal the secretary's determination to the district court in and for the city and county of Denver within thirty days of the date of the determination.

Source: L. 2003: Entire article added, p. 2069, § 7, effective May 22.

1-1.5-106. Federal elections assistance fund - match requirements - maintenance of effort - grants and loans to counties. (1) (a) There is hereby created in the state treasury the federal elections assistance fund, which fund shall be administered by the secretary and shall consist of:

(I) All moneys received by the state from the federal government pursuant to HAVA;

(II) All moneys appropriated or otherwise made available to the fund by the general assembly for the purpose of carrying out the activities required by HAVA;

(III) All moneys received by the state as payment from the counties pursuant to subsection (3) of this section;

(IV) Moneys collected by the secretary for the implementation of this article from federal grants and other contributions, grants, bequests, and donations received from individuals, private organizations, or foundations; and

(V) Interest earned on deposits made to the fund.

(b) All moneys specified in paragraph (a) of this subsection (1) shall be transmitted to the state treasurer to be credited to the fund.

(2) (a) Any moneys received by the state from the federal government pursuant to HAVA shall be used by the state only for the purposes specified by the provisions of HAVA under which the moneys were provided.

(b) All moneys in the fund are continuously appropriated to the department for the proper administration, implementation, and enforcement of HAVA in accordance with the requirements of this article. All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(3) Subject to available appropriations, the secretary may direct that moneys in the department of state cash fund created in section 24-21-104 (3) (b), C.R.S., as of July 1, 2003, be used to satisfy in whole or in part the requirement of section 253 (b) (5) of HAVA that the state appropriate funds for carrying out the activities for which federal payments are being made in an amount equal to five percent of the total amount to be spent for such activities. In order to assist the state in satisfying this requirement of HAVA, the secretary may assess the counties for a share of the financial requirement assessed against the state under HAVA as specified in this subsection (3) and may establish by rule a plan to fairly and reasonably allocate the financial obligation among the counties pursuant to this subsection (3).

(4) For the 2002-03 fiscal year, and for each fiscal year thereafter in which the state receives payments from the federal government in accordance with title I of HAVA, and subject to available appropriations, the general assembly shall make an annual appropriation to the department out of moneys in the department of state cash fund for election-related purposes that is not less than the level of expenditures for such purposes maintained by the state for the 2001-02 fiscal year.

(5) For the 2002-03 fiscal year, and for each fiscal year thereafter in which the state receives payments from the federal government in accordance with title I of HAVA, and subject to available appropriations, the secretary shall maintain out of moneys in the department of state cash fund a level of expenditures in support of the statewide voter registration system created in section 1-2-301 that is not less than the level of expenditures for such purposes maintained by the secretary for the 2001-02 fiscal year.

(6) For the county fiscal year that ends prior to November 1, 2003, and for each county fiscal year thereafter in which the state receives payments from the federal government in accordance with title I of HAVA, each county shall maintain not less than the same amount of expenditures on activities arising under title III of HAVA that it expended on such activities for its fiscal year ending prior to November 2002, excluding moneys expended during that period for capital expenditures on new voting equipment or any other one-time capital expenditure as determined by the secretary.

(7) The secretary may establish a program pursuant to which the secretary may award grants or loans to the counties for the purpose of assisting the counties in meeting any of the requirements imposed upon them pursuant to HAVA or by this article. In connection with the establishment of any such program created pursuant to this subsection (7), the secretary shall specify, without limitation, qualification requirements for eligibility to receive a grant or loan, administration of the grant or loan program, criteria for awarding a grant or loan, any limit on the total amount of moneys to be awarded in a grant or loan pursuant to the requirements of this subsection (7), any limit on the amount to be awarded to any one grant or loan recipient, auditing or reporting requirements for grant or loan recipients, penalty provisions where grant or loan moneys are expended improperly, and, in the case of loans, repayment terms. Notwithstanding any other provision of law, each loan awarded pursuant to this subsection (7) shall bear interest at a specified rate.

(8) In response to the failure by a county to satisfy any of the requirements imposed upon it pursuant to this section, the secretary may deduct from the reimbursement to which the county would ordinarily be entitled pursuant to section 1-5-505.5 the amount of moneys owed by the county pursuant to this section.

(9) Any county may donate to the state equipment for voter registration purposes in accordance with part 3 of article 2 of this title, which equipment is determined to be usable by the secretary. In exchange for such donation, the county shall receive a credit in the amount of the fair market value of the item donated against the financial obligation assessed against the county pursuant to subsection (3) of this section.

Source: L. 2003: Entire article added, p. 2070, § 7, effective May 22.

ARTICLE 2

Qualifications and Registration of Electors

Editor's note: Parts 1, 2, and 3 of this article were numbered as articles 3, 4, and 24 of chapter 49 in C.R.S. 1963. The substantive provisions of parts 1, 2, and 3 of this article were repealed and reenacted in 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

Cross references: For election offenses relating to qualifications and registration of electors, see part 2 of article 13 of this title.

PART 1

QUALIFICATIONS OF ELECTORS

- 1-2-101. Qualifications for registration.
- 1-2-102. Rules for determining residence.
- 1-2-103. Military service - students - inmates - persons with mental illness.
- 1-2-104. Additional qualifications.

PART 2

REGISTRATION OF ELECTORS

- 1-2-201. Registration required - deadline.
- 1-2-202. Registration by county clerk and recorder.
- 1-2-203. Registration on Indian reservations.
- 1-2-204. Questions answered by elector.
- 1-2-205. Self-affirmation made by elector.
- 1-2-206. Declaration of party affiliation. (Repealed)
- 1-2-207. Affidavit registration. (Repealed)
- 1-2-208. Registration by federal postcard application - definitions.
- 1-2-209. Registration of citizens who reside outside the United States - federal law.
- 1-2-209.5. Absent uniformed services and overseas electors - simultaneous voter registration and absentee ballot application - designated

- 1-2-210. office - cooperation with military units.
- 1-2-211. Registration for congressional vacancy elections.
- 1-2-212. Establishment and conduct of branch registration sites. (Repealed)
- 1-2-213. Mobile registration sites - definitions - establishment and conduct. (Repealed)
- 1-2-214. Registration at driver's license examination facilities.
- 1-2-215. Withdrawal of registration. (Repealed)
- 1-2-216. Certificate of registration.
- 1-2-216.5. Change of residence.
- 1-2-217. Verification of change of address.
- 1-2-217.5. Change in residence after close of registration.
- 1-2-218. Change in residence before close of registration - emergency registration at office of county clerk and recorder.
- 1-2-218.5. Change of name.
- 1-2-219. Declaration of affiliation.
- 1-2-220. Changing or withdrawing declaration of affiliation.
- 1-2-221. Loss of party affiliation. (Repealed)
- 1-2-222. Continuation of affiliation. (Repealed)
- 1-2-223. Errors in recording of affiliation.
- 1-2-224. Names transferred when precinct boundaries changed.
- 1-2-225. Canceling registration. (Repealed)

- 1-2-225. Change of polling place - accessibility for persons with disabilities.
- 1-2-226. Deceased electors - purging of registration book. (Repealed)
- 1-2-227. Custody and preservation of records.
- 1-2-228. Residence - false information - penalty.

PART 3

MASTER LIST OF ELECTORS

- 1-2-301. Centralized statewide registration system - secretary of state to maintain computerized statewide voter registration list - county computer records - agreement to match information.
- 1-2-302. Maintenance of computerized statewide voter registration list - confidentiality.
- 1-2-303. Multiple registration - most recent date of registration determines precinct in which allowed to vote.
- 1-2-304. Multiple registration - procedure. (Repealed)
- 1-2-305. Postelection procedures - voting history.

PART 4

HIGH SCHOOL REGISTRATION

- 1-2-401. Legislative declaration.
- 1-2-402. Registration by high school deputy registrars.
- 1-2-403. Training and registration materials for high school deputy registrars.

PART 5

MAIL REGISTRATION AND REGISTRATION AT VOTER REGISTRATION AGENCIES

- 1-2-501. Form for mail and agency registration - procedures for registration by mail for first-time electors - additional identifying information to be provided by first-time registrants.
- 1-2-502. Form for agency registration.
- 1-2-503. Availability of forms.
- 1-2-504. Voter registration agencies.
- 1-2-505. Services at voter registration agencies - services to persons with disabilities.
- 1-2-506. Prohibitions.
- 1-2-507. Transmittal of voter registration applications.
- 1-2-508. Effective date of voter registration.
- 1-2-509. Reviewing voter registration applications.
- 1-2-510. Public disclosure of voter registration activities.
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PART 6

CANCELLATION OF REGISTRATION

- 1-2-601. Withdrawal of registration.
- 1-2-602. Deceased electors.
- 1-2-603. Notification that elector has moved and registered in different county.
- 1-2-604. Cancellation of electors with a multiple registration.
- 1-2-605. Canceling registration.
- 1-2-606. Cancellation by reason of criminal conviction in federal court.

PART 7

VOTER REGISTRATION DRIVES

- 1-2-701. Registration of voter registration drive - training.
- 1-2-702. Conducting a voter registration drive.
- 1-2-703. Violations - penalties.

PART 1

QUALIFICATIONS OF ELECTORS

1-2-101. Qualifications for registration. (1) Every person who is eighteen years of age or older on the date of the next election and who has the following qualifications is entitled to register to vote at all elections:

(a) The person is a citizen of the United States; and

(b) The person has resided in this state and the precinct in which the person intends to register thirty days immediately prior to the election at which the person intends to vote; but, in case of an annexation that changes county boundaries, any person otherwise qualified to register to vote under the provisions of this section who has resided within the territory annexed for the time prescribed shall be deemed to have met the residence requirements for the precinct to which the territory was annexed.

Source: **L. 92:** Entire article R&RE, p. 636, § 2, effective January 1, 1993. **L. 93:** (1)(b) amended, p. 1397, § 13, effective July 1. **L. 94:** (1)(b) amended, p. 1751, § 4, effective January 1, 1995. **L. 95:** (1)(b) amended, p. 821, § 5, effective July 1. **L. 96:** (1)(b) amended, p. 1734, § 7, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-101 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

Cross references: For voting age for electors, see § 1 of art. VII, Colo. Const., and article XXVI of the Constitution of the United States; for registration of citizens residing outside the United States, see § 1-2-209; for emergency registration in certain cases of change of residence, see § 1-2-217.5; for qualifications of electors, see also § 1 of art. VII, Colo. Const.

ANNOTATION

- I. General Consideration.
- II. Residency.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 155-163.

C.J.S. See 29 C.J.S., Elections, § 26.

Law reviews. For comment on Porter v. Johnson appearing below, see 2 Rocky Mt. L. Rev. 131 (1930).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The state has the power to prescribe reasonable and nondiscriminatory qualifications for voting in federal as well as state elections. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

And requirements as to the qualifications of electors are mandatory, and must be strictly observed. Jain v. Bossen, 27 Colo. 423, 62 P. 194 (1900); People v. Turpin, 49 Colo. 234, 112 P. 539 (1910); City of Montrose v. Niles, 124 Colo. 535, 238 P.2d 875 (1951).

This section provides the necessary qualifications for a voter and elector. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

After an elector demonstrates those qualifications, the election code directs that he "shall" be
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registered and permitted to vote. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

Unsworn declarations of a voter are inadmissible to impeach his qualifications as an elector, Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

However, when such declarations are made prior or subsequent to the time of voting they are admissible to impeach the voter's qualifications when made concurrently with the act of voting in the presence of the judges of the election. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

Statutes prohibiting permanent resident aliens from voting in school elections, which incorporate the substantive and procedural requirements concerning general elections into school elections, are constitutional. Skafte v. Rorex, 191 Colo. 399, 553 P.2d 830 (1976), appeal dismissed, 430 U.S. 961, 97 S. Ct. 1638, 52 L. Ed. 2d 352 (1977).

Applied in Hesseltine v. United States, 538 F. Supp. 1003 (D. Colo. 1982).

II. RESIDENCY.

An essential qualification of a voter is that he shall have resided in the state, county, and ward or precinct for the required time immediately preceding the election at which he offers to vote. *Sharp v. McIntire*, 23 Colo. 99, 46 P. 115 (1896).

The state may require its voters to be residents. *Jarmel v. Putnam*, 179 Colo. 215, 499 P.2d 603 (1972).

The purposes of residency requirements are: (1) To preserve the purity of elections, and (2) To prevent the control of state affairs by persons who have no pecuniary interest in them. *Hall v. Beals*, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

Thus the status of transient is not that of residency. *Jarmel v. Putnam*, 179 Colo. 215, 499 P.2d 603 (1972).

As some time limit must be set for determining who is and who is not a resident for the purposes of voting, not only to preserve the purity of the election, but also for administrative reasons. *Hall v. Beals*, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

Moreover, a federal court cannot substitute personal views of what time limit would accomplish the objectives of a residency requirement for the judgment of the Colorado general assembly in the absence of a showing of unreasonable discrimination. *Hall v. Beals*, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

1-2-102. Rules for determining residence. (1) The following rules shall be used to determine the residence of a person intending to register or to vote in any precinct in this state and shall be used by election judges in challenge procedures:

(a) (I) The residence of a person is the principal or primary home or place of abode of a person. A principal or primary home or place of abode is that home or place in which a person's habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence. A residence is a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home. No vacant lot or business address shall be considered a residence.

(II) The mailing address of a homeless individual shall constitute that individual's residence for purposes of registering or voting in any precinct in this state. A homeless individual who has no mailing address shall not be eligible to register or to vote. The mailing address of a homeless individual may include a shelter, a homeless service provider, or a private residence, but it may not include a post office box or general delivery at a post office.

(b) In determining what is the principal or primary place of abode of a person, the following circumstances relating to the person shall be taken into account: Business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, existence of any other residences and the amount of time spent at each residence, and motor vehicle registration.

(c) The residence given for voting purposes shall be the same as the residence given for motor vehicle registration and for state income tax purposes.

(d) A person shall not be considered to have gained a residence in this state, or in any county or municipality in this state, while retaining a home or domicile elsewhere.

But previous section's requirement of three months durational residency as condition of right to vote held unconstitutional. *Jarmel v. Putnam*, 179 Colo. 215, 499 P.2d 603 (1972).

Test of residency after elector moves from precinct. The following inquiry is required to be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote within the precinct: (1) Had the elector established his principal or primary home or place of abode within the election precinct? and (2) was the individual's departure taken or does his absence continue with a present intention of returning to the precinct in the future? *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Intent to keep legal residence central factor. Once a person's legal residence has been established, his intent to keep it becomes the central factor in determining whether it continues. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

But mere intention without other indicia not enough. The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of legal residence for voting purposes. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Evidence supported conclusion that school teachers had moved to the town with intention of establishing permanent residence. *Porter v. Johnson*, 85 Colo. 440, 276 P. 333 (1929).

(e) If a person moves to any other state with the intention of making it a permanent residence, that person shall be considered to have lost Colorado residence after thirty days' absence from this state unless the person has evidenced an intent to retain a residence in this state by a self-affirmation executed pursuant to section 1-8-114.

(f) If a person moves from one county or precinct in this state to another with the intention of making the new county or precinct a permanent residence, after thirty days the person shall be considered to have lost residence in the county or precinct from which the person moved.

Source: **L. 92:** Entire article R&RE, p. 636, § 2, effective January 1, 1993. **L. 94:** (1)(e) and (1)(f) amended, p. 1752, § 5, effective January 1, 1995. **L. 96:** (1)(a) and (1)(e) amended, pp. 1737, 1773, §§ 8, 77, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-102, as it existed in 1980, was similar to 1-2-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For change of residence, see § 1-2-216; for penalty for voting by giving false information regarding place of residence, see § 1-2-228; for residency requirement for electors, see § 1-2-101 (1)(b); for emergency registration in certain cases of change of residence, § 1-2-217.5.

ANNOTATION

- I. General Consideration.
- II. Establishing Residence.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 165-167.

C.J.S. See 29 C.J.S., Elections, §§ 30, 32.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. ESTABLISHING RESIDENCE.

A person is not entitled to vote unless he has adopted the state as a fixed and permanent habitation. *Merrill v. Shearston*, 73 Colo. 230, 214 P. 540 (1923).

And there must not only be a personal presence, but an intent to make the place his true home. *Merrill v. Shearston*, 73 Colo. 230, 214 P. 540 (1923).

And a change of voting place is compelling evidence of an intention to make a change in residence. *Kellner v. Dist. Court*, 127 Colo. 320, 256 P.2d 887 (1953).

But residence is not acquired by mere intention. *People v. Turpin*, 49 Colo. 234, 112 P. 539 (1910).

The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of legal residence for voting purposes. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

As the residence contemplated is synonymous with home or domicile and means actual settlement within the state. *Sharp v. McIntire*, 23 Colo. 99, 46 P. 115 (1896); *People v. Turpin*, 49 Colo. 234, 112 P. 539 (1910).

Hence, mere purchase of home in the state is not sufficient. The purchase by a citizen of another state of a plantation in this state with a bona fide purpose to remove to it, and make it his home as soon as possession can be acquired, but in the meantime retaining his former home, does not constitute him a resident of this state, though he afterwards, pursuing his original purpose, removes to this state and establishes himself here. *People v. Turpin*, 49 Colo. 234, 112 P. 539 (1910).

For residence and capacity as an elector relate to the day of actual settlement in this state, and not to the day when the purpose was formed. *People v. Turpin*, 49 Colo. 234, 112 P. 539 (1910).

Moreover, one who has a home or domicile in another state cannot by a sojourn here, however long, acquire a residence in this state, within the meaning of this

section, without abandoning his former domicile. *Sharp v. McIntire*, 23 Colo. 99, 46 P. 115 (1896).

Thus, to effect a change of residence from one state to another, there must be an actual removal, an actual change of domicile, and a bona fide intention of abandoning the former place of residence and establishing a new one. *People v. Turpin*, 49 Colo. 234, 112 P. 539 (1910).

Test of residency after elector moves from precinct. The following inquiry is required to be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote there: (1) Had the party established his principal or primary home or place of abode within the election precinct? and (2) was the individual's departure taken or does his absence continue with a present intention of returning to the precinct in the future? *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Intent to keep legal residency central factor. Once a person's legal residence has been established, his

intent to keep it becomes the central factor in determining whether it continues. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

Some time limit must be set for determining who is and who is not a resident for the purpose of voting, not only to preserve the purity of the election but also for administrative reasons. *Hall v. Beals*, 292 F. Supp. 610 (D. Colo. 1968), appeal dismissed as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969).

Temporary move for work purposes does not constitute abandonment of domicile. Where a man and his wife had acquired a domicile in a town and a short while before an election they moved to another place where the man had a contract to work with the intention of residing there till the contract was finished and during the

time left their home in the town with part of their furniture in the care of another, they had not abandoned their domicile and were legally entitled to vote at an election in the town of their domicile occurring during the time of their residence at the place of the work. *Jain v. Bossen*, 27 Colo. 423, 62 P. 194 (1900).

One does not lose voting rights by reason of departure or absence from primary home, once it has been established. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980).

But where a person registers in another state and makes declarations to that end, that person cannot legally vote in Colorado. *Kellner v. Dist. Court*, 127 Colo. 320, 256 P.2d 887 (1953).

1-2-103. Military service - students - inmates - persons with mental illness. (1) For the purposes of registration, voting, and eligibility for office, no person shall gain residence by reason of that person's presence, or lose it by reason of absence, while in the civil or military service of the state or of the United States; nor while a student at any institution of higher education; nor while confined in a correctional facility, jail, or state institution.

(2) The provisions of subsection (1) of this section notwithstanding, no person otherwise qualified under the provisions of this code shall be denied the right to register or to vote at any election held within this state solely because that person is a student at an institution of higher education.

(3) No provision in this section shall apply in the determination of residence or residence status of students for any college or university purpose.

(4) No person while serving a sentence of detention or confinement in a correctional facility, jail, or other location for a felony conviction or while serving a sentence of parole shall be eligible to register to vote or to vote in any election; however, a confined prisoner who is awaiting trial but has not been tried shall be certified by the institutional administrator and shall be permitted to register to vote by mail registration pursuant to part 5 of this article.

(5) A person confined in a state institution for persons with mental illness shall not lose the right to vote because of the confinement.

Source: L. 92: Entire article R&RE, p. 637, § 2, effective January 1, 1993. **L. 95:** (4) amended, p. 821, § 6, effective July 1. **L. 2005:** (4) amended, p. 1395, § 5, effective June 6; (4) amended, p. 1430, § 5, effective June 6. **L. 2006:** (5) amended, p. 1394, § 29, effective August 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-103, as it existed in 1980, was similar to 1-2-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For when residence does not change because of presence in the state as a student, inmate, or due to civil or military service, see § 4 of art. VII, Colo. Const.; for disfranchisement during imprisonment, see § 10 of art. VII, Colo. Const.

- I. General Consideration.
- II. Civil or Military Service.
- III. Students.
- IV. Inmates.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 169-172.

C.J.S. See 29 C.J.S., Elections, §§ 26, 34, 35, 43, 44.

Law reviews. For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Judicial notice taken of location of public institutions and elections precinct boundaries. Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

A person serving a sentence of parole does not meet the constitutional requirement of having served out the full term of imprisonment and, therefore, is ineligible to vote. Danielson v. Dennis, 139 P.3d 688 (Colo. 2006).

II. CIVIL OR MILITARY SERVICE.

Mere presence of disabled soldiers in government hospital does not constitute residence. A hospital maintained by the United States government for the treatment of disabled soldiers, who may be transferred or discharged as determined by the government authorities, is an asylum, as that term is used in § 4 of art. VII, Colo. Const., and the inmates of such an institution are not, on account of their mere residence there, entitled to vote at general elections, as the presence in such a hospital does not constitute a residence as is required by this section. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

1-2-104. Additional qualifications. The authorizing legislation, as defined in section 1-1-104 (1.5), may provide additional or alternative qualifications for a person to become an eligible elector of a political subdivision.

Source: L. 92: Entire article R&RE, p. 638, § 2, effective January 1, 1993. **L. 94:** (1)(a) amended, p. 1752, § 6, effective January 1, 1995. **L. 96:** Entire section amended, p. 1735, § 9, effective July 1.

III. STUDENTS.

A student has no right to vote at the place where he resides for the purposes of education. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

Thus a student in a college town is presumed not to have the right to vote. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

And if he attempts to vote, the burden is upon him to prove his residence at that place, which must be done by other evidence than his mere presence in the town. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

Moreover, a student coming to the state for the sole purpose of attending school, not intending to stay after the completion of his course, does not acquire a residence for the purpose of voting. Parsons v. People, 30 Colo. 388, 70 P. 689 (1902).

IV. INMATES.

Presence in an institution as public charges raised a presumption against the right to vote in the precinct in which such is situated and requires evidence to overcome that presumption. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923); Kemp v. Heebner, 77 Colo. 177, 234 P. 1068 (1925); Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

But if, just prior to becoming inmates, voters have a bona fide residence in the precinct in which an institution is situated, they do not lose their residence in that precinct by becoming inmates. Israel v. Wood, 93 Colo. 500, 27 P.2d 1024 (1933).

"Prisoner" construed. The term "prisoner", as used in subsection (4), means one confined to serve a term of imprisonment. Moore v. MacFarlane, 642 P.2d 496 (Colo. 1982) (decided under this section as it existed prior to 1992 repeal and reenactment of this article).

Pretrial detainees may vote. Subsection (4) does not prohibit pretrial detainees confined in a jail or correctional facility from exercising the right to vote. Moore v. MacFarlane, 642 P.2d 496 (Colo. 1982) (decided under this section as it existed prior to 1992 repeal and reenactment of this article).

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-104, as it existed in 1980, was similar to 1-2-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 155-163.

PART 2

REGISTRATION OF ELECTORS

1-2-201. Registration required - deadline. (1) No person shall be permitted to cast a regular ballot at any election without first having been registered within the time and in the manner required by the provisions of this article. No charge shall be made for registration.

(2) Each elector registering shall sign his or her name on the registration record or, if unable to write, shall make a personal mark or be provided assistance to make such a mark by the county clerk and recorder or any other person authorized by the county clerk and recorder or the elector. The elector shall answer the questions required by section 1-2-204 and shall complete the self-affirmation required by section 1-2-205.

(3) Any other provisions of this title to the contrary notwithstanding, electors shall be permitted to vote if the elector is registered to vote no later than twenty-nine days before any primary, presidential, general, special legislative election, municipal, congressional vacancy, special district, or other election, and, if the twenty-ninth day before an election is a Saturday, Sunday, or legal holiday, then electors shall be permitted to register on the next day that is not a Saturday, Sunday, or legal holiday.

Source: L. 92: Entire article R&RE, p. 638, § 2, effective January 1, 1993. **L. 94:** (2) amended, p. 1752, § 7, effective January 1, 1995. **L. 96:** (2) amended and (3) added, p. 1735, §§ 10, 11, effective July 1. **L. 97:** (3) amended, p. 471, § 2, effective July 1. **L. 99:** (3) amended, p. 757, § 4, effective May 20; (3) amended, p. 1389, § 6, effective June 4. **L. 2005:** (1) amended, p. 1395, § 6, effective June 6; (1) amended, p. 1430, § 6, effective June 6.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-201 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

(2) Subsection (3) was formerly numbered as section 1-1-114.

(3) Amendments to subsection (3) by Senate Bill 99-025 and House Bill 99-1097 were harmonized.

Cross references: For eligibility of nonresident citizens to vote, see § 1-2-209; for emergency registration in certain cases of change of residence, see § 1-2-217.5; for challenge of registration, see § 1-9-101. As to offenses relating to registration, see §§ 1-13-201 and 1-13-203 to 1-13-205.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-183.

C.J.S. See 29 C.J.S., Elections, §§ 47, 49, 58.

Law reviews. For note, "Purged Voter Lists", see 44 Den. L.J. 279 (1967).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Registration precedes an election and is a distinct subject of legislation. Aichele v. People ex rel. Lowry, 40 Colo. 482, 90 P. 1122 (1907).

Therefore, jurisdiction of the courts to protect registration books from padding is something distinct from jurisdiction of the conduct of an election on the day when voting takes place. Aichele v. People ex rel. Lowry, 40 Colo. 482, 90 P. 1122 (1907).

Registration laws to be construed to effectuate constitutional requirement election purity. Since § 11 of art. VII, Colo. Const., requires the general assembly "to pass laws to secure the purity of elections", registration

laws enacted in compliance with this requirement should be construed to effectuate the intent and purpose of the constitutional requirement. *People ex rel. Johnson v. Earl*, 42 Colo. 238, 94 P. 294 (1908).

Section held not to apply to school elections.
Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

1-2-202. Registration by county clerk and recorder. (1) The county clerk and recorder shall register any eligible elector residing in any precinct in the state of Colorado who appears in person at any office regularly maintained by the county clerk and recorder and staffed by regular employees at any time. If the elector resides in a county other than where he or she is registering, the registration shall be forwarded to the county clerk and recorder of the county in which the elector resides.

(2) Each municipal clerk shall serve as a deputy registrar. The municipal clerk shall register any eligible elector who appears in person at the municipal clerk's primary office at any time during which registration is permitted in the office of the county clerk and recorder. The municipal clerk shall deliver the new registration records to the office of the county clerk and recorder either in person or by mail no later than the tenth day of each month for the month immediately prior and in person on the day following the last day for registration preceding any election for which registration is required.

(3) (Deleted by amendment, L. 94, p. 1753, § 8, effective January 1, 1995.)

(4) If the county clerk and recorder finds that a precinct is composed of three percent or more non-English-speaking eligible electors, the county clerk and recorder shall take affirmative action to recruit full-time or part-time staff members who are fluent in the language used by the eligible electors and in English. The action shall be conducted through voluntarily donated public service notices in the media, including newspapers, radio, and television, particularly those media which serve those non-English-speaking persons.

(5) The county clerk and recorder shall attest to the signature of all electors who register in the county clerk and recorder's office by placing the official signature of the county clerk and recorder on the registration sheet.

(6) (Deleted by amendment, L. 97, p. 471, § 3, effective July 1, 1997.)

(7) Registration records for any election shall include all those electors who have registered at least twenty-nine days before the election.

Source: **L. 92:** Entire article R&RE, p. 639, § 2, effective January 1, 1993. **L. 93:** (2) amended, p. 1397, § 14, effective July 1. **L. 94:** (1) amended, p. 1151, § 6, effective July 1; (1), (2), (3), and (7) amended, p. 1753, § 8, effective January 1, 1995. **L. 95:** (1), (2), and (7) amended, p. 821, § 7, effective July 1. **L. 97:** (1), (2), (6), and (7) amended, p. 471, § 3, effective July 1. **L. 99:** (2) amended, p. 757, § 5, effective May 20.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-202 as said section existed in 1991 and 1979, the years prior to each repeal and reenactment of this article.

(2) Amendments to subsection (1) by House Bill 94-1286 and House Bill 94-1294 were harmonized.

Cross references: For verification of registration sheets and admissibility thereof in evidence in criminal proceedings for election offenses, see §§ 1-2-205 (4) and 1-13-207; for questions answered and oath taken by the elector, see §§ 1-2-204 and 1-2-205.

ANNOTATION

- I. General Consideration.
- II. Registering Qualified Elector.
- III. Registering Family Member.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 182.

C.J.S. See 29 C.J.S., Elections, § 59.

II. REGISTERING QUALIFIED ELECTOR.

The entire purpose of the election law, insofar as it relates to the subject of registration, is to render it impossible to prevent registration on account of political affiliations or preferences. People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

Person complying with section is entitled to have name upon registration list. People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

And in such instances there is no power to prevent the registration. See People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

Nor strike the name from the registration list. See People ex rel. Smith v. Dist. Court, 33 Colo. 16, 78 P. 684 (1904).

However, registration lists are only prima facie evidence that the persons whose names appear thereon are legally qualified to vote, and so, when they present themselves at the polls, they may be challenged. People ex rel. Smith v. Dist. Court, 33 Colo. 22, 78 P. 679 (1904).

Closing registration books 32nd day before election is constitutional. Since the state is entitled to a

reasonable time to complete whatever administrative tasks are necessary to prevent fraud, the requirement that registration books be closed after the 32nd day before an election is constitutionally valid. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972) (decided prior to 1992 repeal and reenactment of this article).

But county clerks must register any persons otherwise qualified as electors who are or will be residents of the state for 32 days on the date of the election for which they seek to register. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972) (decided prior to 1992 repeal and reenactment of this article).

III. REGISTERING FAMILY MEMBER.

Where individuals are members of a religious order, then, even though they live together in a community, such a community within the meaning of this section is not such a family as to make registration valid. Goss v. Klipfel, 112 Colo. 87, 146 P.2d 217 (1944).

1-2-203. Registration on Indian reservations. The secretary or secretary's designee of any tribal council of an Indian tribe located on a federal reservation which has no municipality contained within the reservation shall serve as a deputy registrar only for registration purposes for the county in which the reservation is located. The secretary of the tribal council or the secretary's designee shall take registrations only in the tribal council headquarters. The secretary of the tribal council or the secretary's designee shall register any eligible elector residing in any precinct in the county who appears in person in the office of the secretary of the tribal council at any time during which registration is permitted in the office of the county clerk and recorder. The secretary of the tribal council shall forward the registration records to the county clerk and recorder, either in person or by certified mail, on or before the fifteenth day of each month; except that the secretary of the tribal council shall appear in person to deliver any registration records to the county clerk and recorder on the day following the last day that registration is permitted preceding any election for which registration is required.

Source: L. 92: Entire article R&RE, p. 640, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1398, § 15, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992 and 1980. Provisions of this section, as it existed in 1992, are the same as those contained in 1-2-202.5 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 178-183.

C.J.S. See 29 C.J.S., Elections, § 47.

Annotator's note. The following annotations are taken from a case decided under former provisions similar to this section.

Provisions not mandatory. To treat all of the provisions of this statute as mandatory so as to deprive

those who attempt to register would provide an unequal application of the statute and an inconsistency not warranted by any express language in the enactment. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Obtaining social security numbers from vast majority of voters is only directory. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

1-2-204. Questions answered by elector. (1) The county clerk and recorder shall ask each eligible elector making application for registration, and the elector shall answer, the following:

(a) Whether the elector intends to claim the elector's present address as the elector's sole legal place of residence and, in so doing, to abandon claim to any other legal residence;

(b) Whether the elector is aware that, if the elector is a resident of this state for voting purposes, the elector is also a resident of this state for motor vehicle registration and operation purposes and for income tax purposes;

(c) Whether the elector is aware that the elector cannot legally vote in more than one place in any election; and

(d) Whether the elector is aware that a violation of the self-affirmation the elector is about to make is a criminal act under the laws of this state and will subject the elector to the penalties provided by law.

(2) In addition, each eligible elector shall be asked, and the elector shall correctly answer, the following:

(a) The elector's name in full;

(b) The elector's place of residence, including municipal address with street number or, if there is no street number, by legal description of the land upon which the residence sits, including lot, block, addition, division, or subdivision, as applicable. In all other cases, the residence shall be described by the section or subdivision in the township and range as established and numbered by the United States government survey. If the place of residence is an apartment house, rooming house, dormitory, hotel, or motel, the number of the floor and the number of the apartment or room shall also be given. No vacant lot or business address shall be considered a residence. A post office box number shall not be used as a place of residence for the purposes of this subsection (2).

(c) Whether the elector is a citizen of the United States;

(d) The elector's gender;

(e) The elector's date of birth;

(f) The elector's deliverable mailing address if different from the elector's address of record;

(f.5) In the case of an elector who has been issued a current and valid Colorado driver's license, the elector's Colorado driver's license number. If, instead of a driver's license, the elector has been issued a current and valid identification card by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., the elector shall provide the number of the identification card. If the elector has not been issued a current and valid Colorado driver's license or identification card, the elector shall answer that he or she does not have a driver's license or identification card and shall provide the last four digits of the elector's social security number. If the elector does not have a social security number, the elector shall answer that he or she does not have a social security number.

(g) The elector's complete social security number, if the elector wishes to state it;

(h) Whether or not the elector is registered to vote in another county of this state;

(i) Whether or not the elector has voted or was registered to vote in another county of this state or in another state;

(j) The elector's affiliation, if any, if the eligible elector desires to affiliate with any political party or political organization. If this question is not answered, the elector shall be registered as "unaffiliated". Only the eligible elector personally shall declare the eligible elector's affiliation.

(k) Whether any communication by mail from the county clerk and recorder to such eligible elector, including, but not limited to, a voter information card provided pursuant to section 1-5-206 or an elector information card provided pursuant to section 1-2-605, should be sent to the elector's deliverable mailing address.

(2.5) If an applicant for voter registration has not been issued a current and valid Colorado driver's license, a current and valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S., or a social security number, the secretary of state shall assign the applicant a number that will serve to identify the applicant for voter registration

purposes. Insofar as the department of state has created a computerized statewide voter registration list in accordance with the requirements of part 3 of this article and the list assigns unique identifying numbers to registrants, the number assigned under this subsection (2.5) shall be the unique identifying number assigned under the list.

(2.7) The form used for registration of electors shall contain a statement that the applicant must comply with the requirements of paragraph (f.5) of subsection (2) of this section, that an applicant who is qualified to vote in this state but does not have a driver's license, state-issued identification card, or social security number may still register to vote, and that the secretary of state will assign an identifying number to such an applicant for voter registration purposes.

(3) (a) If the county clerk and recorder has reasonable cause to believe that an applicant has falsified any answers to the questions set forth in this section, the county clerk and recorder shall certify the same to the district attorney for investigation and appropriate action.

(b) If the elector states that the elector's present address is the elector's sole legal residence and that the elector claims no other place as the elector's legal residence and if the elector meets the qualifications of section 1-2-101, the county clerk and recorder shall proceed to register the elector.

(c) If the elector does not comply with the requirements of subsections (1) and (2) of this section, the county clerk and recorder shall not register the elector.

(4) (a) In the event that the registration record of a registered elector does not contain the last four digits of the elector's social security number, the county clerk and recorder shall request the elector to provide either the last four digits of the elector's social security number or the elector's full social security number if the elector wishes to state such number. Such a request may be made of the registered elector by the county clerk and recorder:

(I) In any written communication by mail from the county clerk and recorder to the registered elector;

(II) At the registered elector's polling place on the day of the election;

(III) At the registered elector's early voters' polling place;

(IV) In a mail-in ballot application form or in materials to be returned by the registered elector with the mail-in ballot.

(b) No registered elector shall be prohibited from voting at any election for failure to provide the last four digits of the elector's social security number or the elector's full social security number.

(c) Any social security number or the last four digits of a social security number of an elector that is obtained by the county clerk and recorder from such elector pursuant to this section shall be held confidential and shall not be published or be open to or available for public inspection. The county clerk and recorder shall develop appropriate security measures to ensure the confidentiality of such numbers.

(d) The last four digits of a social security number described in this section shall not be considered a social security number for purposes of section 7 of the federal "Privacy Act of 1974", P.L. 93-579.

Source: **L. 92:** Entire article R&RE, p. 641, § 2, effective January 1, 1993. **L. 93:** (2)(j) amended, p. 1398, § 16, effective July 1. **L. 94:** (1)(d) amended, p. 1753, § 9, effective January 1, 1995. **L. 95:** (2)(f) amended, p. 822, § 8, effective July 1. **L. 97:** (2)(i) amended, p. 472, § 4, effective July 1. **L. 98:** (2)(f.5) and (4) added and (2)(g) amended, p. 279, §§1, 2, effective April 14. **L. 99:** (2)(f) amended and (2)(k) added, p. 279, § 3, effective August 4; (2)(j) amended, p. 158, § 2, effective August 4. **L. 2003:** (2)(f.5) amended and (2.5) added, p. 2072, § 8, effective May 22. **L. 2004:** (2)(c), (2)(d), and (2)(f.5) amended, p. 426, § 2, effective April 13; (2)(f.5), IP(4)(a), (4)(a)(I), and (4)(b) amended and (4)(d) added, p. 1051, § 2, effective May 21. **L. 2006:** (2)(f.5) amended and (2.7) and (3)(c) added, pp. 2028, 2029, §§ 1, 2, effective June 6. **L. 2007:** (4)(a)(IV) amended, p. 1775, § 2, effective June 1; (2)(f.5) amended, p. 1968, § 4, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-203, as it existed in 1980, was similar to 1-2-206 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (2)(f.5) was amended in Senate Bill 04-084. Those amendments were superseded by the amendment of subsection (2)(f.5) in Senate Bill 04-213.

(3) Subsection (2)(f.5) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 186.

C.J.S. See 29 C.J.S., Elections, § 47.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Provisions not mandatory. To treat all of the provisions of this statute as mandatory so as to deprive those who attempt to register would provide an unequal application of the statute and an inconsistency not warranted by any express language in the enactment. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Obtaining social security numbers from vast majority of voters is only directory. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

Supporters of minor parties must be allowed to designate that support on voter registration forms. The refusal to permit such designation unnecessarily burdens the opportunity of the citizen and his party to promote their minority interests. Baer v. Meyer, 577 F. Supp. 838 (D. Colo. 1984), aff'd in part, rev'd in part on other grounds, 728 F.2d 471 (10th Cir. 1984).

But party designation need only be permitted if a political organization already exists in the state under its name, has recognized officials, and has previously placed a candidate on the ballot by petition. Baer v. Meyer, 728 F.2d 471 (10th Cir. 1984).

1-2-205. Self-affirmation made by elector. (1) The registration record to be signed by the elector shall bear the following statement:

"WARNING:
IT IS A CRIME:

To swear or affirm falsely as to your qualifications to register to vote."

(2) Each elector making application for registration shall make the following self-affirmation: "I,, do solemnly affirm that I am a citizen of the United States and that on the date of the next election I shall have attained the age of eighteen years and shall have resided in the state of Colorado at least thirty days and in precinct no. at least thirty days before the election. I further affirm that the present address I listed herein is my sole legal place of residence and that I claim no other place as my legal residence."

(3) (Deleted by amendment, L. 94, p. 1754, § 10, effective January 1, 1995.)

(4) The elector shall sign the registration record as evidence of the affirmation made by the elector.

Source: L. 92: Entire article R&RE, p. 643, § 2, effective January 1, 1993. L. 94: (2), (3), and (4) amended, p. 1754, § 10, effective January 1, 1995.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-204, as it existed in 1980, was similar to 1-2-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For procuring false registration, see § 1-13-203.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 47.

1-2-206. Declaration of party affiliation. (Repealed)

Source: L. 92: Entire article R&RE, p. 643, § 2, effective January 1, 1993. L. 94: (2) amended, p. 1152, § 7, effective July 1. L. 96: (2) repealed, p. 1736, § 12, effective July 1. L. 99: Entire section repealed, p. 165, § 28, effective August 4.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-205 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-205, as it existed in 1980, is similar to 1-2-206 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-207. Affidavit registration. (Repealed)

Source: L. 92: Entire article R&RE, p. 644, § 2, effective January 1, 1993. **L. 94:** Entire section repealed, p. 1754, §§ 11, 48, effective January 1, 1995.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-206 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-206, as it existed in 1980, was similar to 1-2-203 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-208. Registration by federal postcard application - definitions. (1) An absent uniformed services elector or a resident overseas elector may register by properly executing the federal postcard application as provided in the laws of the United States known as the "Federal Voting Assistance Act of 1955", as amended, and may vote in accordance with the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq., as amended. The application shall be made no later than the twenty-ninth day before the election at which the person intends to vote. The date of registration shall be the date of the postmark or date of receipt by the county clerk and recorder of the application, whichever is earlier. Where the application has no postmark and the application is received no later than five days after the close of registration, the county clerk and recorder shall record the date of registration as the date of the last day allowed for registration. Where the application has no postmark and the application is received six or more days after the close of registration, the county clerk and recorder shall record the date of registration as the date that the application was received. The elector shall be given the same ballot as any other elector registered in that precinct at that address.

(2) (Deleted by amendment, L. 2003, p. 1332, § 1, effective August 6, 2003.)

(2.5) As used in this code, unless the context otherwise requires:

(a) "Absent uniformed services elector" means:

(I) A member of a uniformed service of the United States who is a resident of this state but who is absent from the state by reason of active duty;

(II) A member of the merchant marine of the United States who is a resident of this state but who is absent from the state by reason of service in the merchant marine; or

(III) A spouse or dependent of a person described in subparagraph (I) or (II) of this paragraph (a) who is a resident of this state but who is absent from the state by reason of the active duty or service of that person.

(b) "Nonresident overseas elector" means a citizen of the United States who resides outside the United States and who was a resident of this state immediately prior to leaving the United States.

(c) "Resident overseas elector" means a resident of this state who is living temporarily outside the United States.

(3) (Deleted by amendment, L. 2003, p. 1332, § 1, effective August 6, 2003.)

(4) The address used at the time of registration pursuant to this section shall continue to be the address of registration record as long as the eligible elector continues to serve in the United States service.

Source: L. 92: Entire article R&RE, p. 644, § 2, effective January 1, 1993. **L. 94:** (1) amended, p. 1755, § 12, effective January 1, 1995. **L. 95:** (1) amended, p. 822, § 9, effective July 1. **L. 99:** (1) amended, p. 757, § 6, effective May 20. **L. 2003:** (1), (2), and (3) amended and (2.5) added, p. 1332, § 1, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-207 as said section existed in 1991, the year prior to the most recent repeal and

reenactment of this article. Section 1-2-207, as it existed in 1980, was similar to 1-2-204 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the "Federal Voting Assistance Act of 1955", as it existed prior to its repeal in 1987, see 42 U.S.C. sec. 1973cc et seq.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 47.

1-2-209. Registration of citizens who reside outside the United States - federal law. (1) A nonresident overseas elector who meets the other qualifications for registration in this state shall be registered and entitled to vote at any primary, general, or congressional vacancy election for federal offices only, upon receipt by the county clerk and recorder of the former domicile of the elector of a federal postcard application, even though while residing outside the United States the elector does not have a place of residence in this state and the intent to return may be uncertain, if:

(a) The elector does not maintain a sole legal residence, is not registered to vote, and is not voting in any other state, any district, or any territory of the United States; or

(b) The elector has a valid passport or card of identity issued under the authority of the United States secretary of state.

(1.5) Notwithstanding section 1-2-101 (1) (b), a person who is a citizen of the United States, will be eighteen years of age or older on the date of the next election, and has never been a resident of any state but whose parent is eligible to register and vote in this state may register to vote by federal postcard application or by state application and vote in accordance with subsection (3) of this section.

(2) The application shall be made no later than the twenty-ninth day before the election at which the person intends to vote. The date of registration shall be the date of the postmark or date of receipt by the county clerk and recorder of the application, whichever is earlier. Where the application has no postmark and the application is received no later than five days after the close of registration, the county clerk and recorder shall record the date of registration as the date of the last day allowed for registration. Where the application has no postmark and the application is received six or more days after the close of registration, the county clerk and recorder shall record the date of registration as the date that the application was received.

(3) An elector registered pursuant to this section shall vote by absent voting procedures as authorized by this code. The mail-in ballot issued shall carry the candidates for the following federal offices: President and vice president of the United States, member of the United States senate, and member of the United States house of representatives. Any elector registered pursuant to this section shall be canceled under the provisions of section 1-2-605. Upon returning to the United States, any elector registered pursuant to this section shall notify the county clerk and recorder either to cancel the elector's registration because the elector has established residence outside the county where registered or to complete the registration because the elector has established residence in the county.

Source: **L. 92:** Entire article R&RE, p. 645, § 2, effective January 1, 1993. **L. 94:** (2) amended, p. 1755, § 13, effective January 1, 1995. **L. 95:** (2) amended, p. 822, § 10, effective July 1. **L. 97:** (3) amended, p. 475, § 15, effective July 1. **L. 99:** (2) amended, p. 758, § 7, effective May 20. **L. 2003:** IP(1) and (3) amended, p. 1333, § 2, effective August 6. **L. 2007:** (3) amended, p. 1776, § 3, effective June 1; (1.5) added, p. 1041, § 1, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-208 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-208, as it existed in 1980, was similar to 1-2-204.5 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (1.5) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the "Uniformed and Overseas Citizens Absentee Voting Act", see 42 U.S.C. sec. 1973ff et seq.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 187-189.

C.J.S. See 29 C.J.S., Elections, § 47.

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

Previous six-month residency requirement held not so unreasonable as to amount to prohibited discrimination under fourteenth amendment. See Hall

v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot,

396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969) (decided under former law).

The state has the authority and responsibility to prescribe qualifications for voting in an election for president and vice president of the United States. Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968), vacated as moot, 396 U.S. 45, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969) (decided under former law).

1-2-209.5. Absent uniformed services and overseas electors - simultaneous voter registration and absentee ballot application - designated office - cooperation with military units. (1) An elector may simultaneously register to vote and apply for an absentee ballot by federal postcard application pursuant to section 1-2-208 or 1-2-209. If the elector requests that the application be considered an application for permanent mail-in voter status pursuant to section 1-8-104.5, the designated election official shall provide a mail-in ballot to the elector for each such subsequent election.

(2) (a) In accordance with section 702 of the "Help America Vote Act of 2002", 42 U.S.C. sec. 1973ff-1 (b), as amended, the secretary of state is designated as the single office responsible for providing information on voter registration and absentee ballot procedures to be used by absent uniformed services electors, nonresident overseas electors, and resident overseas electors who wish to register to vote or vote in any jurisdiction in this state.

(b) The secretary of state shall cooperate with the voting assistance officer of any unit of the armed forces of the United States, an officer of the Colorado National Guard, or an officer of a unit of the reserve components of the uniformed services of the United States based in Colorado to assist with voter registration and absentee ballot applications.

Source: L. 2003: Entire section added, p. 1334, § 3, effective August 6. **L. 2007:** (1) amended, p. 1776, § 4, effective June 1; (2)(b) amended, p. 1041, § 2, effective August 3.

Editor's note: Subsection (2)(b) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-2-210. Registration for congressional vacancy elections. In any congressional vacancy election, the time and method of registration and performance of other acts shall be as provided in this part 2 for general elections. In every other respect, the election shall be held in conformity with this part 2 as far as practicable. Any congressional vacancy election shall be called in sufficient time before the date of the election to permit the county clerk and recorder to comply with the provisions of this part 2.

Source: L. 92: Entire article R&RE, p. 646, § 2, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-211 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-211, as it existed in 1980, was similar to 1-2-213 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 184. **C.J.S.** See 29 C.J.S., Elections, § 47.

1-2-211. Establishment and conduct of branch registration sites. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 647, § 2, effective January 1, 1993. **L. 94:** Entire section repealed, p. 1755, § 14, effective January 1, 1995.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-212 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-212, as it existed in 1980, was similar to 1-2-215 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-212. Mobile registration sites - definitions - establishment and conduct. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 648, § 2, effective January 1, 1993. **L. 94:** (2)(a) and (2)(b) amended, p. 1756, § 15, effective January 1, 1995. **L. 95:** (2)(b) amended, p. 823, § 11, effective July 1. **L. 97:** Entire section repealed, p. 472, § 5, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-212.9 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

1-2-213. Registration at driver's license examination facilities. (1) Commencing July 1, 1985, the department of revenue, through its local driver's license examination facilities, shall provide each eligible elector who applies for the issuance, renewal, or correction of any type of driver's license or for an identification card pursuant to part 3 of article 2 of title 42, C.R.S., an opportunity to complete an application to register to vote by use of a form containing the necessary information required by this part 2.

(2) (a) An applicant who wishes to complete an application for registration shall read and answer the questions required by section 1-2-204 and shall make a self-affirmation by signing the following statement: "I,, do solemnly affirm that I am a citizen of the United States and that on the date of the next election I shall have attained the age of eighteen years and shall have resided in the state of Colorado at least thirty days and in my precinct at least thirty days before the election. I further affirm that the present address I listed herein is my sole legal place of residence and that I claim no other place as my legal residence." Each application for registration shall bear the following statement: "Warning: It is a class 1 misdemeanor to affirm falsely as to your qualifications to register to vote."

(b) The application for registration shall not require any information that duplicates information required in the driver's license portion of the form other than a second signature or other information necessary to assure that the applicant meets the eligibility requirements for registration. The application may require only the minimum amount of information necessary to prevent duplicate voter registrations and enable the county clerk and recorder to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.

(c) The application shall include a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration statistics purposes, and a statement that, if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration statistics purposes.

(d) The authorized employee shall stamp the application for registration with a validation stamp and indicate on the driver's license that the bearer registered to vote, which license shall be the elector's receipt. Applications and changes shall be forwarded on a weekly basis, or on a daily basis when open

during the last week allowed for registration prior to any election, to the county clerk and recorder of the county in which the driver's license examination facility is located, and, if the applicant lives in a different county from the facility, the application shall then be forwarded to the county clerk and recorder of the county in which the applicant resides.

(e) The department of revenue, through its local driver's license examination facilities, shall notify a program participant, as defined in section 24-21-203 (8), C.R.S., who submits a current and valid address confidentiality program authorization card, of the provisions of section 24-21-208 (4), C.R.S., and inform the participant about how he or she may use a substitute address, as defined in section 24-21-203 (13), C.R.S., on the driver's license or identification card.

(3) Upon receipt of an application, the county clerk and recorder shall determine if the application is complete. If the application is complete, the applicant shall be deemed registered as of the date of application. If the application is not complete, the county clerk and recorder shall notify the applicant, stating the additional information required. The applicant shall be deemed registered as of the date of application if the additional information is provided at any time prior to the actual voting.

(4) (Deleted by amendment, L. 94, p. 1756, § 16, effective January 1, 1995.)

(5) The department of revenue and the secretary of state shall jointly develop an application form and a change of name and address form, which shall allow an applicant wishing to register to vote to do so by the use of a single form containing the necessary information required by this part 2 and the information required for the issuance, renewal, or correction of the driver's license or identification card. The forms shall be furnished to the local driver's license examination facilities by the department of revenue.

(6) Unless the registrant states on the form that the change of address is not for voter registration purposes, any eligible elector who continues to reside in the county where the elector is registered to vote and who informs a driver's license examination facility of a change of name or address shall have notice of the change of name or address forwarded by the driver's license examination facility to the county clerk and recorder of the county in which the driver's license facility is located. If the elector lives in a different county from the facility, the county clerk and recorder shall forward the change to the county clerk and recorder of the county in which the elector resides. The county clerk and recorder of the county in which the elector resides shall change the registration record of the elector to reflect the change of name and address.

(7) No information relating to the failure of an applicant for a driver's license to sign a voter registration application may be used for any purpose other than voter registration statistics.

Source: L. 92: Entire article R&RE, p. 648, § 2, effective January 1, 1993. L. 93: (1) and (2) amended, p. 1398, § 17, effective July 1. L. 94: (1) amended, p. 2542, § 7, effective January 1, 1995; (2), (4), and (6) amended and (7) added, p. 1756, § 16, effective January 1, 1995. L. 96: (2)(c), (2)(d), and (7) amended, p. 1736, § 13, effective July 1. L. 97: (2)(d) amended, p. 472, § 6, effective July 1. L. 2004: (5) amended, p. 191, § 1, effective August 4. L. 2007: (2)(e) added, p. 1699, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992 and 1980. Provisions of this section, as it existed in 1992, are similar to those contained in 1-2-212.5 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-2-214. Withdrawal of registration. (Repealed)

Source: L. 92: Entire article R&RE, p. 650, § 2, effective January 1, 1993. L. 97: Entire section repealed, p. 478, § 23, effective July 1.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-213 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-213, as it existed in 1980, was similar to 1-2-216 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was relocated to § 1-2-601.

1-2-215. Certificate of registration. Upon the request of any eligible elector, including requests made at the time of a regular biennial or special school election, special district election, or municipal election, the county clerk and recorder shall make and deliver to the elector a certificate of registration for the elector, setting forth the facts of the elector's registration, including the date, description, and other information recorded in connection with the registration, which certificate shall be attested by the signature of the county clerk and recorder and the seal of the county.

Source: L. 92: Entire article R&RE, p. 650, § 2, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-214 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-214, as it existed in 1980, was similar to 1-2-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 63.

1-2-216. Change of residence. (1) Any eligible elector who has moved within a county may have his or her residence changed on the registration record by submitting a letter or form furnished by the county clerk and recorder, either by mail or in person. The letter or form for the change shall include the elector's new residence address within the county, mailing address if different from the residence address, old address, printed name, birth date, social security number, if the elector wishes to state it, and signature and the date.

(2) Any address change made on the same form or personal letter as a change or withdrawal of affiliation or name change shall be accepted by the county clerk and recorder if the form or personal letter is signed indicating that the elector intended to make the change or withdrawal indicated on the form or in the personal letter.

(3) Any eligible elector who is unable to write may request assistance from the county clerk and recorder, and the county clerk and recorder shall sign the form, witnessing the elector's mark, or the elector may have his or her mark attested to by any other person on a prescribed form or personal letter, if the request is not made at the office of the county clerk and recorder.

(4) (a) For the twenty-eight days before and on the day of any election, any eligible elector, by appearing in person at the office of the clerk and recorder of the county in which the elector is registered, may complete a change of address form stating, under penalty of perjury, that the elector moved no later than the thirtieth day before the election and that, on the day of the election, the elector will have lived at the new address in the new precinct for at least thirty days. Upon the receipt of the request, the county clerk and recorder shall verify the registration of the elector and, upon verification, if the elector does not choose to vote at the time the request is verified, shall issue or authorize a certificate of registration showing the information required in section 1-2-215 plus the change of address.

(b) The election judges shall allow the registered elector to vote in the precinct where the new address is located. The election judges shall use the certificate of registration as a substitute registration record, entering the date of the election and pollbook ballot number on the certificate and including it with the registration book when it is returned to the county clerk and recorder following the election.

(c) If the request is received by the county clerk and recorder on or after the time early voting has begun, the elector may vote at the time the change of address request is received. The elector may also vote by mail-in ballot if the ballots have been prepared. If the request is received on the election day, the elector may, at the discretion of the county clerk and recorder, vote in the office of the county clerk and recorder rather than voting in the precinct where the new address is located.

(5) A change of residence within the same precinct may be made on the day of any primary, general, odd-numbered year, congressional vacancy, or coordinated election at the polls by the elector.

Source: **L. 92:** Entire article R&RE, p. 651, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 1399, § 18, effective July 1. **L. 94:** (1) amended, p. 1152, § 8, effective July 1; (1) and (4) amended, p. 1758, § 17, effective January 1, 1995. **L. 95:** (4) amended, p. 823, § 12, effective July 1. **L. 96:** (1) amended, p. 1736, § 14, effective July 1. **L. 97:** (4)(a) and (5) amended, p. 473, § 7, effective July 1. **L. 99:** (4)(a) amended, p. 758, § 8, effective May 20. **L. 2005:** (3) amended, p. 1395, § 7, effective June 6; (3) amended, p. 1430, § 7, effective June 6. **L. 2007:** (4)(c) amended, p. 1776, § 5, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-215 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-215, as it existed in 1980, was similar to 1-2-208 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (1) by House Bill 94-1286 and House Bill 94-1294 were harmonized.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 33.

1-2-216.5. Verification of change of address. (1) If a county clerk and recorder receives information from the United States postal service or a driver's license examination facility that an elector has changed addresses and is still within the county, the county clerk and recorder shall send that elector a notice of the change by forwardable mail and a postage prepaid, preaddressed return form by which the registrant may verify or correct the address information.

(2) If a county clerk and recorder receives information from the United States postal service or a driver's license examination facility that an elector has changed addresses and is a resident of another county in Colorado, the county clerk and recorder shall send the elector a notice by forwardable mail and a postage prepaid mail registration form preaddressed to the appropriate county clerk and recorder by which the registrant may reregister to vote.

Source: **L. 94:** Entire section added, p. 1759, § 18, effective January 1, 1995. **L. 95:** Entire section amended, p. 823, § 13, effective July 1. **L. 96:** (2) amended, p. 1737, § 15, effective July 1.

1-2-217. Change in residence after close of registration. (1) Notwithstanding the provisions of subsection (2) of this section and sections 1-2-101 and 1-2-102, an elector who moves from the precinct where registered during the twenty-nine days before any election shall be permitted to cast a ballot at the election by one of the following methods: At the polling place for the precinct where registered, by a mail-in ballot, or by early voting.

(2) Any eligible elector who moves from the precinct in which the elector is registered to some other precinct in the same county after the time during which registration is permitted may return to the precinct of registration and vote on the day of any election and sign a change of residence form. The form shall include a printed statement of the penalty for anyone who votes by knowingly giving false information.

Source: **L. 92:** Entire article R&RE, p. 651, § 2, effective January 1, 1993. **L. 93:** (1) amended, p. 1400, § 19, effective July 1. **L. 94:** (1) amended, p. 1760, § 19, effective January 1, 1995. **L. 95:** (1) amended, p. 824, § 14, effective July 1. **L. 96:** (2) amended, p. 1737, § 16, effective July 1. **L. 99:** (1) amended, p. 758, § 9, effective May 20. **L. 2007:** (1) amended, p. 1776, § 6, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-101 and 1-2-215 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Sections 1-2-101 and 1-2-215, as they existed in 1980, were similar to 1-2-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article. For a more detailed comparison, see the comparative table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 168. **C.J.S.** See 29 C.J.S., Elections, § 33.

1-2-217.5. Change in residence before close of registration - emergency registration at office of county clerk and recorder. (1) Notwithstanding the provisions of sections 1-2-101 and 1-2-102, an elector may register to vote in an election after the registration books of the county clerk and recorder are closed for that election by completing an emergency registration affidavit as prescribed by the secretary of state if the elector:

(a) Appears in person at the primary office of the county clerk and recorder or at any office or location authorized by the county clerk and recorder and staffed by personnel authorized by the county clerk and recorder; and

(b) Complies with the requirements of section 1-2-204 (1) and (2).

(c) (Deleted by amendment, L. 2003, p. 986, § 1, effective April 17, 2003.)

(2) The elector shall declare under oath in the emergency registration affidavit that the elector wishes to register to vote in the election in the precinct and county for which the registration books are closed and that:

(a) The elector was registered to vote in a different county in this state, moved to the new county of residence prior to the close of the registration books but failed to register with the county clerk and recorder prior to the close of the registration books, and has not and will not cast a vote in the election in the county of previous residence;

(b) The elector applied to register to vote prior to the close of registration by federal postcard application or mail registration application;

(c) The elector applied to register to vote prior to the close of registration in a voter registration drive and is able either to show the receipt from the voter registration application that the elector submitted to the voter registration drive or to provide the location of the voter registration drive and the approximate date of registration; or

(d) The elector applied to register at a voter registration agency designated pursuant to the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg, as amended, and is able to provide the name and location of and the approximate date of registration application at the agency.

(3) (Deleted by amendment, L. 2002, p. 1625, § 1, effective June 7, 2002.)

(4) The elector shall subscribe to the oath before an officer authorized by law to administer oaths. Upon completion of the affidavit and the approval and qualification of the elector by the county clerk and recorder or other designated election official, the name of the elector shall be placed in the registration books or added to the list of eligible electors for the election for which the registration books were closed.

(5) An elector changing registration on an election day pursuant to this section may vote in the office of the county clerk and recorder or in the precinct where the new address is located. If the elector's qualification to vote cannot be immediately established at the office of the county clerk and recorder, the elector may vote by provisional ballot.

Source: L. 94: Entire section added, p. 1759, § 18, effective January 1, 1995. L. 95: (2)(a) and (2)(b) amended and (5) added, p. 824, § 15, effective July 1. L. 96: (1)(b) amended, p. 1466, § 1, effective June 1; (2)(b) amended, p. 1737, § 17, effective July 1. L. 2002: (1)(a), (1)(c), IP(2), (3), (4), and (5) amended, p. 1625, § 1, effective June 7. L. 2003: IP(1), (1)(b), (1)(c), IP(2), (2)(a), and (5) amended, p. 986, § 1, effective April 17. L. 2004: (1)(a) and (1)(b) amended, p. 1052, § 3, effective May 21. L. 2005: (1)(a) and (2) amended, p. 1395, § 8, effective June 6; (1)(a) and (2) amended, p. 1430, § 8, effective June 6. L. 2007: (1)(b) and (2) amended, p. 1968, § 5, effective August 3.

Editor's note: Subsections (1)(b) and (2) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-2-218. Change of name. (1) Any eligible elector who has been registered in the county and who subsequently has had a name change by reason of marriage, divorce, or other legal means may have his or her name changed on the registration book by appearing before the county clerk and recorder by submitting the change on forms prescribed by the secretary of state or in the form of a personal letter at any time during which registration is permitted or on election day by an election judge on forms prescribed by the secretary of state and supplied to each polling place by the county clerk and recorder.

(2) The prescribed form or personal letter for the change shall include the elector's printed former legal name, printed present legal name, birth date, social security number, if the elector wishes to state it, and signature of present legal name and the date. Prescribed forms may be furnished by the county clerk and recorder upon oral or written request by the elector.

(3) A name change may not be made by anyone other than the elector.

Source: L. 92: Entire article R&RE, p. 652, § 2, effective January 1, 1993. L. 93: Entire section amended, p. 1400, § 20, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-216 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-216, as it existed in 1980, was similar to 1-2-209 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 47.

Annotator's note. The following annotations are taken from cases decided under former provisions similar to this section.

The pertinent sections concerning the transfer of party affiliation from one county to another are §§ 1-14-104 and 1-14-105 (now §§ 1-2-218 and 1-2-219). *Murphey v. Trott*, 160 Colo. 336, 417 P.2d 234 (1966).

And § 1-14-104 (now § 1-2-218) provides that unless the procedure of § 1-14-105 (now § 1-2-219) is

followed, an elector moving from one county to another shall lose his party affiliation. *Murphey v. Trott*, 160 Colo. 336, 417 P.2d 234 (1966).

Provision of section constitutional. Provision in this section that a registered elector shall lose his party affiliation "by his failure to vote at any general election" is constitutional. *Duprey v. Anderson*, 184 Colo. 70, 518 P.2d 807 (1974).

1-2-218.5. Declaration of affiliation. (1) The declaration of affiliation of each registered elector shall remain as recorded in the registration record until the elector changes or withdraws his or her affiliation.

(2) Any eligible elector who has not declared an affiliation with a political party or political organization shall be designated on the registration records of the county clerk and recorder as "unaffiliated". Any unaffiliated eligible elector may declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201 (2), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or a form furnished by the county clerk and recorder, either by mail or in person.

Source: L. 99: Entire section added, p. 158, § 3, effective August 4. L. 2003: (2) amended, p. 1308, § 2, effective April 22.

1-2-219. Changing or withdrawing declaration of affiliation. (1) Any eligible elector desiring to change or withdraw the elector's affiliation may do so by completing and signing a prescribed request for the change or withdrawal and filing it with the county clerk and recorder or by submitting a personal letter written by the elector to the county clerk and recorder at any time up to and including the twenty-ninth day preceding an election. The prescribed form or personal letter for the change shall include the elector's printed name, address within the county, birth date, social security number, if the

elector wishes to state it, and signature, the date, the elector's previous affiliation status, and the requested change in affiliation status. A prescribed form shall be furnished by the county clerk and recorder upon the elector's oral or written request. Upon receiving the request, the county clerk and recorder shall change the elector's affiliation on the registration record. If the affiliation is withdrawn, the designation on the registration record shall be changed to "unaffiliated". If an elector changes affiliation, the elector is entitled to vote, at any primary election, only the ballot of the political party to which the elector is currently affiliated. A change or withdrawal of affiliation may not be made by anyone other than the elector.

(2) Any declaration, change, or withdrawal of affiliation made on the same form or personal letter as an address or name change shall be accepted by the county clerk and recorder if the form or personal letter is dated and signed so that it is clearly indicated that the elector intended to make the change or withdrawal indicated on the form or in the personal letter. An elector who is unable to write may request assistance from the county clerk and recorder, and the county clerk and recorder shall sign the form, witnessing the elector's mark or, on a personal letter, the elector shall have his or her signature attested to by a notary public.

Source: L. 92: Entire article R&RE, p. 652, § 2, effective January 1, 1993. L. 93: Entire section amended, p. 1401, § 21, effective July 1. L. 99: (1) amended, p. 158, § 4, effective August 4. L. 2003: (1) amended, p. 1309, § 3, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-217 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-217, as it existed in 1980, was similar to 1-14-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 183, 186. **C.J.S.** See 29 C.J.S., Elections, § 211.

1-2-220. Loss of party affiliation. (Repealed)

Source: L. 92: Entire article R&RE, p. 653, § 2, effective January 1, 1993. L. 95: Entire section amended, p. 824, § 16, effective July 1. L. 99: Entire section repealed, p. 165, § 28, effective August 4.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-218 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-218, as it existed in 1980, was similar to 1-14-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-221. Continuation of affiliation. (Repealed)

Source: L. 92: Entire article R&RE, p. 653, § 2, effective January 1, 1993. L. 93: Entire section amended, p. 1402, § 22, effective July 1. L. 99: Entire section repealed, p. 165, § 28, effective August 4.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-219 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-219, as it existed in 1980, was similar to 1-14-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-222. Errors in recording of affiliation. (1) If an elector goes to the elector's legal voting place to vote at any primary election or to the office of the county clerk and recorder and contends that an error has been made in the recording of the elector's affiliation on the registration book or that the affiliation has been unlawfully changed or withdrawn, the election judges or the county clerk and recorder shall allow the elector to make and sign an affidavit, which shall be substantially in the form provided in subsection (4) of this section. Any election judge or the county clerk and recorder has

authority to administer the oath and take the acknowledgment of the elector's affidavit. When the affidavit is completed, the county clerk and recorder shall make the change as specified in the affidavit using the date of the affidavit as the new affiliation date.

(2) (Deleted by amendment, L. 99, p. 159, § 5, effective August 4, 1999.)

(3) For the purposes of determining the eligibility of candidates for nomination in accordance with sections 1-4-601 (4) (a) and 1-4-801 (4), the eligibility of persons to vote at any precinct caucus, assembly, or convention in accordance with section 1-3-101, or the eligibility of persons to sign petitions in accordance with section 1-4-801 (2), the date of declaration of the party affiliation of the elector shall be the date of the declaration which the elector alleges by affidavit to have been erroneously recorded or unlawfully changed or withdrawn.

(4) Printed affidavit forms shall be furnished to the election judges of the various election precincts. The affidavit form shall be substantially as follows:

STATE OF COLORADO)
) ss.
County of

I,, believing an error has been made as to the recording of my party affiliation, or a change unlawfully made, or a withdrawal unlawfully made on the registration book of precinct in County, do solemnly swear, or affirm, that the party affiliation as now shown on the registration book is an error, or has been unlawfully changed, or has been unlawfully withdrawn and that my correct party affiliation should be instead of and request that the party affiliation be corrected on the registration book. My correct affiliation was made on or before (date) at (place).

Dated
Signed
Subscribed and sworn to before me this day of, 20....

.....
Election Judge or County Clerk
Precinct
County

Source: L. 92: Entire article R&RE, p. 654, § 2, effective January 1, 1993. **L. 93:** (3) amended, p. 1765, § 1, effective June 6. **L. 99:** (1) and (2) amended, p. 159, § 5, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-220 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-220, as it existed in 1980, was similar to 1-14-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-2-223. Names transferred when precinct boundaries changed. (1) In case any new election precinct is formed within a county or in case of the division of any existing precinct, the precinct number on the voter's master file record shall be changed to reflect the new precinct number.

(2) In case any change is made in precinct boundaries as a result of annexation affecting county boundaries, the county clerk and recorder of the county from which the annexed territory was detached shall forthwith remove from the registration book the registration records of all electors residing in the annexed territory. The county clerk and recorder shall forthwith deliver, in person or by certified mail, the registration records to the county clerk and recorder of the county to which the territory was annexed, who shall insert them in the registration book of the appropriate precinct upon receipt. The registrations shall be considered as continuing registrations with all the registered electors involved having full rights and privileges as if no change in county boundaries had occurred.

Source: L. 92: Entire article R&RE, p. 656, § 2, effective January 1, 1993. **L. 97:** (1) amended, p. 473, § 8, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-221 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-221, as it existed in 1980, was similar to 1-2-210 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 75.

1-2-224. Canceling registration. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 656, § 2, effective January 1, 1993. **L. 93:** (6)(a) amended and (9) added, p. 1403, § 23, effective July 1. **L. 94:** (6)(a) and (7) amended, p. 1152, § 9, effective July 1; (1)(a), (2)(a)(II), (5)(a), (5)(b)(II), (6), and (9) amended, p. 1760, § 20, effective January 1, 1995. **L. 95:** (1)(a), IP(2), and (9) amended, p. 825, § 17, effective July 1. **L. 96:** (3.5) added, p. 1738, § 18, effective July 1. **L. 97:** Entire section repealed, p. 478, § 23, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-222 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-222, as it existed in 1980, was similar to 1-2-211 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) The amendment to subsection (6)(a) by House Bill 94-1286 was harmonized with the amendment to subsection (6) by House Bill 94-1294.

(3) This section was relocated to § 1-2-605.

1-2-225. Change of polling place - accessibility for persons with disabilities. (1) The general assembly hereby finds, determines, and declares that the purpose of this section is to protect the fundamental right of citizens with disabilities to vote. The general assembly further finds that, where reasonable polling place access for electors with disabilities cannot be provided, other reasonable accommodations should be made to enable those electors to cast their votes.

(2) The elector information card required to be sent to all registered electors pursuant to sections 1-2-605 and 1-5-206 shall include a notice to the elector indicating whether the polling place for the elector is accessible to persons with disabilities. The information card shall also include an affidavit which may be signed and returned to the county clerk and recorder indicating that the elector to whom the information card was sent has a disability and requesting a change of polling place assignment to a location that is accessible to persons with disabilities.

(3) Any registered elector with a disability, or a family member living at the same address as the elector and acting for the elector, may appear at the county clerk and recorder's office in the county in which the elector is registered and sign an affidavit requesting a temporary change of polling place to a place that is accessible to persons with disabilities.

(4) Upon receiving an affidavit requesting a polling place change pursuant to this section, a county clerk and recorder shall temporarily assign the requesting elector to a polling place that uses the same ballot type as the permanently assigned location and is accessible to persons with disabilities, if such a place exists. If more than one such polling place exists, the county clerk and recorder shall assign the polling place that is closest to the elector's residence.

(5) A family member living at the same address as an elector who has changed polling places pursuant to subsection (2) or (3) of this section may also change polling places to vote at the same polling place as the elector with a disability by filing a request with the county clerk and recorder containing the information required by the county clerk and recorder.

(6) Any request for a change of polling place to a polling place which is accessible to persons with disabilities must be received by the designated election official no later than twelve days before the election for which the change is requested.

(7) Upon granting a request for a temporary change of polling place pursuant to this section, the county clerk and recorder shall make and deliver to the elector a temporary polling place certificate setting forth the facts of the temporary polling place change, including the name of the elector, the date

of the election, the type of election, and the address of the temporary polling place. The certificate shall be attested by the hand of the county clerk and recorder and the seal of the county.

(8) An elector who has temporarily changed polling places pursuant to this section shall present the temporary polling place certificate on the day of the election to the election judges at the temporary polling place assigned to the elector. The election judges shall allow the elector to vote at that polling place. The election judges shall use the certificate as a substitute registration record, entering the date of the election and pollbook ballot number on the certificate and including it with the registration book when it is returned to the county clerk and recorder following the election.

(9) Only one application for a temporary change of polling place pursuant to this section must be made for all subsequent primary and general elections in any calendar year. Separate applications for temporary changes of polling places must be made for all other elections.

(10) Any political subdivision which holds elections is authorized to follow the procedures specified in this section for its elections.

Source: **L. 92:** Entire article R&RE, p. 659, § 2, effective January 1, 1993. **L. 93:** (1) to (6) amended, pp. 1629, 1403, §§ 1, 24, effective July 1. **L. 95:** (6) amended, p. 825, § 18, effective July 1. **L. 97:** (2) amended, pp. 473, 475, §§ 9, 16, effective July 1. **L. 99:** (6) amended, p. 759, § 10, effective May 20.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-222.5 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

(2) Amendments to subsection (6) by House Bill 93-1255 and Senate Bill 93-242 were harmonized. Amendments to subsection (2) by sections 9 and 16 of House Bill 97-1234 were harmonized.

1-2-226. Deceased electors - purging of registration book. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 661, § 2, effective January 1, 1993. **L. 97:** (1) and entire section repealed, pp. 475, 478, §§ 17, 23, effective July 1.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-223 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-223, as it existed in 1980, was similar to 1-2-211.1 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was relocated to § 1-2-602.

1-2-227. Custody and preservation of records. Registration books shall be left in the custody of the county clerk and recorder, who shall be responsible for them. The oaths or affirmations, applications for affidavit registration, federal postcard applications, applications for change of residence or change of name, and other papers provided for by this part 2 shall be preserved by the county clerk and recorder and shall not be destroyed until after the next general election. They shall be public records subject to examination by any elector, and the elector shall have the right to make copies of the records during office hours.

Source: **L. 92:** Entire article R&RE, p. 661, § 2, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-2-224 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-224, as it existed in 1980, was similar to 1-2-214 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Law reviews. For note, "Purged Voter Lists", see 44 Den. L.J. 279 (1967).

1-2-228. Residence - false information - penalty. Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 92: Entire article R&RE, p. 662, § 2, effective January 1, 1993. L. 2002: Entire section amended, p. 1464, § 4, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is the same as 1-2-225 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-225, as it existed in 1980, was similar to 1-2-310 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Conduct prohibited by this section is sufficiently distinguishable from misdemeanor election

statute to create two separate offenses, avoiding violation of equal protection clause. This section is violated when defendant actually votes by providing false information about present residence. *People v. Onesimo Romero*, 746 P.2d 534 (Colo. 1987).

PART 3

MASTER LIST OF ELECTORS

1-2-301. Centralized statewide registration system - secretary of state to maintain computerized statewide voter registration list - county computer records - agreement to match information. (1) No later than January 1, 2006, the secretary of state shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive, computerized statewide voter registration system defined, maintained, and administered at the state level, which system shall contain a computerized statewide voter registration list maintained by the secretary of state that contains the name and registration information of every legally registered voter in the state and that assigns a unique identifier to each legally registered voter. The single, uniform, official, centralized, interactive, computerized statewide voter registration system required by this subsection (1) shall be referred to in this part 3 as the "centralized statewide registration system". The centralized statewide registration system shall replace the voter registration and election management that was required to be developed or acquired prior to May 22, 2003. On or before January 1, 2006, the centralized statewide registration system and the computerized statewide voter registration list shall be fully compliant with all applicable requirements specified in section 303 of the federal "Help America Vote Act of 2002", P.L. No. 107-252, codified at 42 U.S.C. sec. 15301, et seq.

(2) (a) On and after January 1, 2006, the county clerk and recorder of each county shall maintain voter registration information by utilizing the centralized statewide registration system developed or acquired by the department of state under subsection (1) of this section. Prior to the implementation of the computerized statewide voter registration list required by subsection (1) of this section, if the county chooses to maintain voter registration information on its own computer system, the information required by law to be transmitted to the secretary of state shall be transmitted in a media format acceptable to the secretary of state and within the time prescribed by the secretary of state, by this section, and by section 1-2-302.

(b) No later than five days after the last day to register for a primary, general, odd-numbered year, or congressional vacancy election, the county clerk and recorder of each county shall transmit to the

secretary of state, in a media format acceptable to the secretary of state, a list of the registered electors in the county. The list shall contain, but shall not be limited to, each elector's name, place of residence, mailing address if different from residence address, precinct number, date of birth, social security number or other identification number, and the date on which the elector was last registered.

(3) (Deleted by amendment, L. 2001, p. 514, § 1, effective January 1, 2002.)

(4) (a) (I) (Deleted by amendment, L. 2003, p. 2073, § 9, effective May 22, 2003.)

(II) The centralized statewide registration system shall enable county clerks and recorders to maintain voter registration information and shall include such additional capabilities as may be necessary or desirable to enable county clerks and recorders and the secretary of state to carry out their responsibilities related to the conduct of elections. Such additional capabilities may include but need not be limited to the preparation of ballots, the identification of voting districts for each address, access by county clerks and recorders to the master list of registered electors and, on or after January 1, 2006, the computerized statewide voter registration list, maintained pursuant to this section and section 1-2-302, the management of mail-in and mail ballots, the preparation of official abstracts of votes cast, the transmission of voting data from county clerks and recorders to the secretary of state, and reporting of voting results on election night.

(III) Subject to available appropriations, the department of state is responsible for the cost of acquiring computer hardware and providing necessary training for the centralized statewide registration system. The secretary of state shall promulgate rules specifying whether such hardware is owned by the department or the counties or whether and to what extent ownership may be shared between the department and the counties. If the department provides system hardware to any county clerk and recorder, it may transfer ownership of the hardware to that clerk and recorder. The secretary of state may promulgate rules providing that the county clerk and recorders shall be solely responsible for the support and maintenance of the hardware provided to the counties. On or after January 1, 2006, the department shall make the centralized statewide registration system software available at no charge to the clerk and recorder of each county.

(b) As soon as practicable, the department of state shall make the master list of registered electors available at no charge on the internet to the county clerk and recorders. This paragraph (b) shall not be construed to require the department to provide or pay for internet connection services for any county.

(c) (Deleted by amendment, L. 2003, p. 2073, § 9, effective May 22, 2003.)

Source: L. 92: Entire article R&RE, p. 662, § 2, effective January 1, 1993. L. 93: (3) added, p. 2039, § 1, effective July 1. L. 94: (2) amended, p. 1152, § 10, effective July 1; (3) amended, p. 2542, § 8, effective January 1, 1995. L. 95: (2) amended, p. 179, § 2, effective April 7. L. 97: (1) and (2)(b) amended, p. 474, § 10, effective July 1. L. 99: (2)(b) amended, p. 759, § 11, effective May 20. L. 2000: (1) amended, p. 1758, § 2, effective January 1, 2001. L. 2001: (4) added, p. 515, § 2, effective May 18; (2)(a) and (3) amended, p. 514, § 1, effective January 1, 2002. L. 2003: (1), (2)(a), and (4) amended, p. 2073, § 9, effective May 22. L. 2005: (1) amended, p. 758, § 1, effective June 1. L. 2007: (4)(a)(II) amended, p. 1776, § 7, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-301 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-301, as it existed in 1980, was similar to 1-2-217 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 67.

1-2-302. Maintenance of computerized statewide voter registration list - confidentiality. (1) The secretary of state shall maintain the master list of registered electors of the entire state on as current a basis as is possible. In order to assist the secretary of state, the county clerk and recorder in each county, no later than five days after the end of each month, shall transmit to the secretary of state in a media format acceptable to the secretary of state all additions, changes, and deletions to the master registration records made in each county for the previous month.

(1.5) The maintenance of the computerized statewide voter registration list by the secretary of state pursuant to section 1-2-301 (1) shall be conducted in a manner that ensures that:

(a) The name of each registered elector appears in the computerized statewide voter registration list;

(b) Only the names of voters who are not registered or who are not eligible to vote are removed from the computerized statewide voter registration list; and

(c) Duplicate names are removed from the computerized statewide voter registration list.

(2) The electors on the computerized statewide voter registration list shall be identified by name, place of residence, precinct number, date of birth, Colorado driver's license number, social security number, or other identification number, as such numbers may have been provided by the elector at the time the elector first registered to vote, and the date of registration.

(3) As soon as is practicable after a general election, the county clerk and recorders shall transmit to the secretary of state, in a media format acceptable to the secretary of state, a list of the electors canceled from the registration records by the county clerk and recorders pursuant to part 6 of this article. The electors shall be identified as provided in subsection (2) of this section.

(3.5) (a) The secretary of state shall coordinate the computerized statewide voter registration list with state agency records on death. Upon being furnished with the report provided to him or her by the state registrar of vital statistics pursuant to section 1-2-602 (1), the secretary of state may electronically cancel the registration of deceased persons.

(b) The secretary of state shall coordinate the computerized statewide voter registration list with state agency records on felony status. Upon being furnished with information from the Colorado integrated criminal justice system that a particular registered elector has been convicted of a felony, the secretary of state may electronically cancel the registration of persons who have been convicted of a felony.

(4) Repealed.

(5) (a) (Deleted by amendment, L. 97, p. 476, § 18, effective July 1, 1997.)

(b) Repealed.

(6) The secretary of state shall determine and use other necessary means to maintain the master list of registered electors on a current basis. In accordance with the provisions of section 42-1-211, C.R.S., the department of state and the department of revenue shall allow for the exchange of information between the systems used by them to collect information on residence addresses, signatures, and party affiliation, including, but not limited to, the driver's license database. The department of revenue may exchange information on residence addresses in the driver's license database with the motor vehicle registration database, motorist insurance database, and the state income tax information systems.

(6.5) At the earliest practical time, the secretary of state, acting on behalf of the department of state, and the executive director of the department of revenue, as the official responsible for the division of motor vehicles, shall enter into an agreement to match information in the database of the centralized statewide registration system with information in the database of the division of motor vehicles to the extent required to enable each department to verify the accuracy of the information provided on applications for voter registration in conformity with the requirements of section 1-2-301.

(6.7) In accordance with the requirements of section 42-1-211 (1.5) (c), C.R.S., the department of revenue shall enter into an agreement with the federal commissioner of social security for the purpose of verifying applicable information in accordance with the requirements of section 303 (a) (5) (B) (ii) of the federal "Help America Vote Act of 2002", P.L. No. 107-252, codified at 42 U.S.C. sec. 15301, et seq.

(7) Repealed.

(8) The secretary of state shall provide adequate technological security measures to prevent unauthorized access to the computerized statewide voter registration list. The secretary of state, the department of revenue, and the clerk and recorders shall not sell, disclose, or otherwise release a social security number, a driver's license or a state-issued identification number, or the unique identification number assigned by the secretary of state to the voter pursuant to section 1-2-204 (2.5) or electronic copies of signatures created, transferred, or maintained pursuant to this section, part 1 of article 8 of this title, or section 42-1-211, C.R.S., to any individual other than the elector who created such signature absent such elector's consent; except that nothing in this subsection (8) shall prohibit the sale, disclosure, or release of an electronic copy of such signature for use by any other public entity in carrying out its functions, or the sale, disclosure, or release of a photocopied or microfilmed image of an elector's signature.

Source: **L. 92:** Entire article R&RE, p. 662, § 2, effective January 1, 1993. **L. 93:** (6) amended, p. 2040, § 2, effective July 1. **L. 94:** (6) amended, p. 2542, § 9, effective January 1, 1995. **L. 95:** IP(1) and (3) amended, p. 180, § 3, effective April 7. **L. 97:** (1) to (3) and (5)(a) amended and (4), (5)(b), and (7) repealed, pp. 476, 478, §§18, 23, effective July 1. **L. 99:** (1) amended, p. 759, § 12, effective May 20. **L. 2001:** (6) amended, p. 518, § 7, effective January 1, 2002. **L. 2002:** (6) amended, p. 1626, § 2, effective June 7; (8) added, p. 1864, § 1, effective June 7. **L. 2003:** (1.5), (3.5), (6.5), and (6.7) added and (2), (3), and (8) amended, p. 2075, § 10, effective May 22. **L. 2005:** (6.7) amended, p. 759, § 2, effective June 1; (6.5) amended, p. 17, § 1, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-302 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-302, as it existed in 1980, was similar to 1-2-218 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) In 1997, subsections (4) and (7) were relocated to § 1-2-602 and subsection (5)(b) was relocated to § 1-2-604.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 183. **C.J.S.** See 29 C.J.S., Elections, § 67.

1-2-303. Multiple registration - most recent date of registration determines precinct in which allowed to vote. (1) If a registered elector is registered to vote in more than one precinct in this state, the elector shall vote only in the precinct which pertains to the most recent date of registration, as determined by the secretary of state's master list of registered electors.

(2) and (3) Repealed.

Source: **L. 92:** Entire article R&RE, p. 664, § 2, effective January 1, 1993. **L. 93:** Entire section amended, p. 278, § 1, effective July 1. **L. 95:** (2) amended and (3) added, p. 825, § 19, effective July 1. **L. 97:** (1) amended and (2) and (3) repealed, pp. 474, 478, §§ 11, 23, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-303 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-303, as it existed in 1980, was similar to 1-2-219 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) In 1997, subsections (2) and (3) were relocated to § 1-2-603.

Cross references: For penalty for voting in wrong precinct, see § 1-13-709; for penalty for voting twice, see § 1-13-710.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 181, 183. **C.J.S.** See 29 C.J.S., Elections, §§ 64, 68, 69.

1-2-304. Multiple registration - procedure. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 664, § 2, effective January 1, 1993. **L. 97:** Entire section repealed, pp. 478, 474, §§ 23, 12, effective July 1.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, was similar to 1-2-304 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-304, as it existed in 1980, was similar to 1-2-220 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) In 1997, subsection (1) was relocated to § 1-2-604.

1-2-305. Postelection procedures - voting history. (1) Not later than sixty days after a state election, each county clerk and recorder shall transmit to the secretary of state, in a media format acceptable to the secretary of state, a list of electors showing who voted and who did not vote in the election. The list shall contain the information provided for in section 1-2-301 (1). For electors who voted, the list shall show such elector's method of voting, whether by early voting, mail-in ballot, mail ballot, polling place voting, or otherwise.

(2) Upon receipt of the lists, the secretary of state shall compare them with the master list of registered electors maintained in the office in order to ascertain if any elector has voted more than once. If it is determined that an elector has voted more than once, the secretary of state shall notify the proper district attorney for prosecution of a violation of the provisions of this code.

(3) As used in this section, unless the context otherwise requires:

(a) "District of state concern" means a congressional district or a unique political subdivision with territory in more than one county and with its own enabling legislation, as identified by rules adopted by the secretary of state pursuant to section 1-1-104 (9.5).

(b) "State election" means a general, primary, or congressional vacancy election, a special legislative election involving more than one county, a ballot issue election involving a statewide ballot issue, or any election involving a candidate or ballot issue for a district of state concern.

(4) No later than March 1 of each year following a year in which a general election was held, the secretary of state shall distribute to each major and minor political party, free of charge, a list of individuals who actually voted in such election. Such list may be in the form of a computer list.

Source: **L. 92:** Entire article R&RE, p. 664, § 2, effective January 1, 1993. **L. 95:** Entire section amended, p. 180, § 4, effective April 7. **L. 2000:** (1) amended and (3) and (4) added, p. 1758, § 3, effective January 1, 2001. **L. 2007:** (1) amended, p. 1777, § 8, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. This section, as it existed in 1992, is similar to 1-2-305 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Section 1-2-305, as it existed in 1980, was similar to 1-2-221 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 67.

PART 4

HIGH SCHOOL REGISTRATION

Editor's note: Enactment of this part 4 by House Bill 92-1317 and repeal and reenactment of this article in House Bill 92-1333 were harmonized.

1-2-401. Legislative declaration. It is the intent of the general assembly that, in order to promote and encourage voter registration of all eligible electors in the state, registration should be made as convenient as possible. It is determined by the general assembly that if voter registration is convenient, the number of registered voters will increase. It is further determined by the general assembly that support and cooperation of school officials and interested citizens will make high school registration successful. It is therefore the purpose of this part 4 to encourage voter registration by providing convenient registration procedures for qualified high school students, employees, and other persons by using high school deputy registrars.

Source: L. 92: Entire part added, p. 621, § 1, effective July 1. L. 93: Entire section amended, p. 1403, § 25, effective July 1.

1-2-402. Registration by high school deputy registrars. (1) Each principal of a public high school, or the principal's designee who is a registered voter in the county, may serve as a deputy registrar. The principal of each high school shall notify the county clerk and recorder of the county in which the high school is located of the name of the school's deputy registrar, and the county clerk and recorder shall maintain a list of the names of all of the high school deputy registrars in that county in a public file.

(2) The high school deputy registrar may register any student, employee of the school, other person who attends school functions, or any other person who is eligible to register to vote. Voter registration may be made available only when the school is open for classes or any other school or community function. The high school deputy registrar shall take registrations only on school district premises.

(3) A high school deputy registrar may have available an official application form for voter registration for each student who is eighteen years of age or who will be eighteen years of age at the time of the next election.

Source: L. 92: Entire part added, p. 621, § 1, effective July 1. L. 93: Entire section amended, p. 1403, § 26, effective July 1.

1-2-403. Training and registration materials for high school deputy registrars. (1) The county clerk and recorder shall train and supervise the high school deputy registrars, and, after training is completed, shall administer the oath of office to the high school deputy registrars.

(2) The county clerk and recorder shall issue sufficient registration materials to each high school deputy registrar for the registration of all eligible students, employees, and other persons at the high school which the high school deputy registrar serves. The high school deputy registrar shall give a receipt to the county clerk and recorder for all materials issued.

(3) The deputy registrar shall stamp the application for registration with a validation stamp and provide the applicant with a receipt verifying the registration application. Applications and changes shall be forwarded on a weekly basis to the county clerk and recorder of the county in which the high school is located. During the last week allowed for registrations prior to any election, such applications shall be forwarded daily to the county clerk and recorder of the county in which the high school is located.

(4) Upon receipt of an application, the county clerk and recorder shall determine if the application is complete. If the county clerk and recorder determines that the application is complete, the applicant shall be deemed registered as of the date of application. If the county clerk and recorder determines that the application is not complete, the county clerk and recorder shall notify the applicant, stating the additional information required. The applicant shall be deemed registered as of the date of application when the additional information is provided any time prior to the actual voting.

Source: L. 92: Entire part added, p. 622, § 1, effective July 1. L. 93: (1), (2), and (3) amended, p. 1404, § 27, effective July 1.

PART 5

MAIL REGISTRATION AND REGISTRATION
AT VOTER REGISTRATION AGENCIES

1-2-501. Form for mail and agency registration - procedures for registration by mail for first-time electors - additional identifying information to be provided by first-time registrants. (1) The secretary of state, in consultation with the federal election assistance commission, shall develop an application form that may be used for mail voter registration, voter registration at voter registration agencies, and voter change of address. The form developed shall:

(a) Require only such identifying information, including the signature of the applicant and other information such as data relating to previous registration by the applicant, as is necessary to enable the appropriate county clerk and recorder to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(b) Include a statement that:

(I) Specifies each eligibility requirement, including citizenship;

(II) Contains an affirmation that the applicant meets each requirement; and

(III) Requires the signature of the applicant, under penalty of perjury;

(b.5) (I) Include:

(A) The question: "Are you a citizen of the United States of America?" and boxes for the applicant to indicate whether the applicant is or is not a citizen of the United States;

(B) The question "Will you be eighteen years of age on or before election day?" and boxes for the applicant to indicate whether or not the applicant will be eighteen years of age or older on election day;

(C) The statement "If you checked 'no' in response to either of these questions, do not complete this form."; and

(D) A statement informing the applicant that, if the form is submitted by mail and the applicant has not previously voted in the county, or in the state if the statewide voter registration system required by section 1-2-301 is operating, the applicant shall submit with the registration form a copy of identification as defined in section 1-1-104 (19.5), the applicant's driver's license number, or the last four digits of the applicant's social security number, otherwise the applicant will be required to submit a copy of identification with the applicant's mail ballot or absentee ballot.

(II) If an applicant for registration fails on the mail registration form to answer the question specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (b.5), the state or local election official shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for federal office.

(c) Not include any requirement for notarization or other formal authentication; and

(d) Include, in print that is identical to that used in the affirmation portion of the application:

(I) A statement of the penalties provided by law for submission of a false voter registration application;

(II) A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(III) A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(e) Include the question, "Do you wish to be designated as a permanent mail-in voter?" and boxes for the applicant to indicate whether the applicant does or does not wish such designation. An elector who requests designation as a permanent mail-in voter that meets the requirements of section 1-8-104.5 shall be added to the list of permanent mail-in voters maintained pursuant to section 1-8-108.

(1.5) An elector who submits a voter registration form by mail and has not previously voted in the county, or in the state if the statewide voter registration system required by section 1-2-301 is operating, shall:

(a) Submit with the voter registration form a copy of identification as defined in section 1-1-104 (19.5), the elector's driver's license number, or the last four digits of the elector's social security number; or

(b) Submit a copy of identification as defined in section 1-1-104 (19.5) with the elector's mail ballot in accordance with section 1-7.5-107 (3.5) or with the elector's mail-in ballot in accordance with section 1-8-113 (3).

(2) (a) Subject to the requirements of paragraph (b) of this subsection (2), in addition to the identifying information required to be provided by the elector pursuant to subsection (1) of this section, a person who applies to register by mail in accordance with this part 5 shall submit with the registration application:

(I) In the case of an elector who has been issued a current and valid Colorado driver's license or a current and valid identification card issued by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., the number of the elector's Colorado driver's license or identification card; or

(II) In the case of an elector who has not been issued a current and valid Colorado driver's license or a current and valid identification card issued by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., the last four digits of the person's social security number.

(a.5) If an applicant has not been issued a current and valid Colorado driver's license, has not been issued a current and valid identification card by the department of revenue in accordance with part 3 of article 2 of title 42, C.R.S., and does not have a social security number, the secretary of state shall assign the applicant a number for voter registration purposes in accordance with section 1-2-204 (2.5).

(b) Notwithstanding any other provision of law, a Colorado driver's license number, the number of an identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S., or the last four digits of the person's social security number shall only be received in satisfaction of the requirements of this subsection (2) where the state or local election official matches the number of the driver's license or identification card or the person's social security number submitted under paragraph (a) of this subsection (2) with an existing state identification record bearing the same number, name, and date of birth as provided in such registration information.

(c) If the elector does not comply with the requirements of this subsection (2), the county clerk and recorder shall not register the elector.

Source: L. 94: Entire part added, p. 1762, § 21, effective January 1, 1995. L. 2003: (1)(b.5) and (2) added, pp. 2076, 2077, §§ 11, 12, effective May 22. L. 2004: IP(1) and (1)(b.5)(I)(D) amended, p. 1053, § 4, effective May 21. L. 2006: (1)(b.5)(I)(D) and (2)(a) amended and (1.5) and (2)(a.5) added, pp. 2029, 2030, §§ 3, 4, 5, effective June 6. L. 2007: (1)(e) added and (1.5)(b) amended, p. 1777, §§ 9, 10, effective June 1; IP(1.5), (2)(a), and (2)(a.5) amended and (2)(c) added, p.1969, § 6, effective August 3.

Editor's note: The introductory portion to subsection (1.5) and subsections (2)(a), (2)(a.5), and (2)(c) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-2-502. Form for agency registration. (1) In addition to the information required in section 1-2-501, the form used at a voter registration agency shall include:

(a) The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(b) If the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(c) Boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote, together with the statement, in close proximity to the boxes and in prominent

type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(d) The statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."

(e) The statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the secretary of state." The form shall also include the address and telephone number of the secretary of state.

(2) All agencies providing an opportunity to complete the voter registration forms shall keep copies of all records relating to the completion of the forms for two years. The forms shall not be considered public records but shall be available to the secretary of state for purposes of compiling data in compliance with the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg.

Source: L. 94: Entire part added, p. 1763, § 21, effective January 1, 1995.

1-2-503. Availability of forms. The application forms for mail voter registration shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Source: L. 94: Entire part added, p. 1764, § 21, effective January 1, 1995.

1-2-504. Voter registration agencies. (1) The following offices are designated as voter registration agencies:

- (a) All offices that provide public assistance;
- (b) All offices that provide state-funded programs primarily engaged in providing services to persons with disabilities;
- (c) All recruitment offices of the armed forces of the United States; and
- (d) Any other federal, state, local government, or nongovernment office that chooses to provide voter registration service or applications.

(2) The following agencies may provide application forms for mail voter registration:

- (a) All offices of county clerk and recorders;
- (b) All federal post offices; and
- (c) Any other federal, state, local government, or nongovernment office that chooses to provide voter registration service or applications.

Source: L. 94: Entire part added, p. 1764, § 21, effective January 1, 1995.

1-2-505. Services at voter registration agencies - services to persons with disabilities. (1) At each voter registration agency, the following services shall be made available with each application made in person for service or assistance and with each recertification, renewal, or change of address form relating to the service or assistance:

- (a) Distribution of mail voter registration application forms;
- (b) Assistance to applicants in completing agency voter registration application forms, unless the applicant refuses such assistance; and
- (c) Acceptance of completed agency voter registration application forms for transmittal to the appropriate county clerk and recorder.

(2) If a voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services described in subsection (1) of this section at the person's home.

Source: L. 94: Entire part added, p. 1764, § 21, effective January 1, 1995.

1-2-506. Prohibitions. (1) A person who provides the services described in section 1-2-505 shall not:

- (a) Seek to influence an applicant's political preference or party registration;
- (b) Display any political preference or party allegiance;
- (c) Make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote;
- (d) Make any statement to an applicant or take any action, the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(2) A person who provides the services described in section 1-2-505 shall ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(3) No information relating to a declination to register to vote made in connection with an application completed at a voter registration agency may be used for any purpose other than voter registration.

Source: L. 94: Entire part added, p. 1765, § 21, effective January 1, 1995.

1-2-507. Transmittal of voter registration applications. A completed agency registration application accepted at a voter registration agency shall be transmitted to the county clerk and recorder for the county in which the agency is located not later than ten days after the date of acceptance; except that, if a registration application is accepted during the five days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk and recorder for the county in which the agency is located not later than five days after the date of acceptance.

Source: L. 94: Entire part added, p. 1765, § 21, effective January 1, 1995. **L. 95:** Entire section amended, p. 826, § 20, effective July 1.

1-2-508. Effective date of voter registration. (1) The county clerk and recorder shall ensure that any eligible applicant is registered to vote in an election if:

(a) In the case of registration with a driver's license application, the valid voter registration application of the applicant is accepted by a driver's license examination facility no later than twenty-nine days before the date of an election;

(b) In the case of registration by mail, the valid voter registration application of the applicant is postmarked not later than twenty-nine days before the date of the election;

(c) In the case of registration by mail where the application has no postmark and the application is received by a county clerk and recorder no later than five days after the close of registration, the date of registration shall be the date of the last day allowed for registration;

(d) In the case of registration at a voter registration agency, the valid agency voter registration application of the applicant is accepted at the voter registration agency not later than twenty-nine days before the date of the election; and

(e) In any other case, the valid voter registration application of the applicant is received by the appropriate county clerk and recorder not later than twenty-nine days before the date of the election.

(2) The effective date of a voter registration application or change of registration that is completed at the office of the county clerk and recorder or in the presence of a deputy registrar shall be the date received by the office of the county clerk and recorder or by the registrar. The effective date of an application or change of registration that is completed at a driver's license examination facility or voter registration agency shall be the date that the application or change is accepted by the facility or agency. The effective date of a voter registration application or change of registration that is completed

by a mail registration form shall be the date of the postmark or receipt by the county clerk and recorder, whichever is earlier.

Source: L. 94: Entire part added, p. 1765, § 21, effective January 1, 1995. L. 95: (1) amended and (2) added, p. 826, § 21, effective July 1. L. 97: (1)(c) amended, p. 474, § 13, effective July 1. L. 99: (1)(a) and (1)(c) amended, p. 759, § 13, effective May 20.

1-2-509. Reviewing voter registration applications. (1) Upon receipt of an application, if the applicant resides in a county other than the county receiving the application, the county clerk and recorder shall within five days transmit the application to the clerk and recorder of the applicant's county; except that, if the application is received thirty days or less before an election, the application shall be transmitted as expeditiously as possible.

(2) Upon receipt of an application, the county clerk and recorder shall verify that the application is complete and accurate. If the application is complete and accurate, the county clerk and recorder shall notify the applicant of the registration. If the application is not complete or is inaccurate, the county clerk and recorder shall notify the applicant, stating the additional information required.

(3) Within ten business days after receipt of the application, the county clerk and recorder shall notify each applicant of the disposition of the application by nonforwardable mail. If within twenty business days after receipt of the application the notification is returned to the county clerk and recorder as undeliverable, the applicant shall not be registered. If the notification is not returned within twenty business days as undeliverable, then the applicant shall be deemed registered as of the date of the application; except that, if the applicant was notified that the application was not complete, then the applicant shall be deemed registered as of the date of the application if the additional information is provided at any time prior to the actual voting.

Source: L. 94: Entire part added, p. 1766, § 21, effective January 1, 1995. L. 95: (2) and (3) amended, p. 827, § 22, effective July 1. L. 2005: (3) amended, p. 1396, § 9, effective June 6; (3) amended, p. 1431, § 9, effective June 6.

1-2-510. Public disclosure of voter registration activities. (1) The secretary of state shall maintain for at least two years and shall make available for public inspection and copying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that the records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to subsection (1) of this section shall include lists of the names and addresses of all persons to whom confirmation notices are sent and information concerning whether or not each person has responded to the notice as of the date that inspection of the records is made.

(3) The secretary of state shall also be responsible for filing any reports or information concerning the implementation of the federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg, with the federal election commission as may be required.

Source: L. 94: Entire part added, p. 1766, § 21, effective January 1, 1995. L. 97: (2) amended, p. 475, § 14, effective July 1.

1-2-511. Prosecutions of violations. Any person who believes a violation of this part 5 has occurred may file a written complaint no later than sixty days after the date of the violation with the secretary of state. If the secretary of state determines, after a hearing, that the violation has occurred, he or she shall so notify the attorney general, who may institute a civil action for relief, including a permanent or temporary injunction, a restraining order, or any other appropriate order, in the district court. Upon a proper showing that such person has engaged or is about to engage in any prohibited acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted

without bond by the court. If, within one hundred twenty days after a complaint is filed with the secretary of state, no civil action for relief is instituted by the attorney general, the complainant shall have a private right of action based on an alleged violation of this part 5 and may institute a civil action in district court for any appropriate remedy. Any such action shall be filed within one year from the date of the alleged violation.

Source: L. 94: Entire part added, p. 1767, § 21, effective January 1, 1995.

PART 6

CANCELLATION OF REGISTRATION

Editor's note: This entire part was enacted in 1997 and contains provisions relocated from parts 2 and 3 of article 2 of title 1. The former C.R.S. number of each section relocated is in an editor's note following that section.

1-2-601. Withdrawal of registration. At any time that registration is permitted in the county clerk and recorder's office, any person who desires to withdraw or cancel his or her own registration may do so by filing with the county clerk and recorder a self-affirmation of withdrawal of registration, and the self-affirmation shall be used as the record of evidence to cancel the elector's registration record.

Source: L. 97: Entire part added with relocations, p. 465, § 1, effective July 1.

Editor's note: This section was formerly numbered as 1-2-214.

1-2-602. Deceased electors. (1) As soon as is practicable after the end of each month, the state registrar of vital statistics shall furnish the secretary of state with a report of all persons eighteen years of age or older who have died during the previous month. To the extent possible, persons on the report shall be identified by name, county of residence, date of birth, and social security number.

(2) The secretary of state shall forward to each county clerk and recorder monthly the information received from the state registrar of vital statistics concerning persons registered to vote in the county who have died.

(3) The county clerk and recorder shall cancel the registration of any elector who is deceased and of whose death the county clerk and recorder has received notice pursuant to subsection (2) of this section.

(3.5) The secretary of state may by electronic means cancel the registration of any elector who is deceased and of whose death the secretary has received notice pursuant to subsection (1) of this section.

(4) The county clerk and recorder shall cancel the registration of any elector who is deceased when the county clerk and recorder receives written notice of the fact. The written notice shall be signed by a family member of the deceased. If the county clerk and recorder has sufficient proof that an elector is deceased, cancellation may be made without such written notice.

Source: L. 97: Entire part added with relocations, p. 465, § 1, effective July 1. **L. 2003:** (3.5) added, p. 2077, § 13, effective May 22.

Editor's note: This section was formerly numbered as 1-2-302(4) and (7) and 1-2-226(1) and (2).

1-2-603. Notification that elector has moved and registered in different county. (1) If the elector registers to vote in another county, the county clerk and recorder shall immediately transmit the information to the county clerk and recorder of the elector's prior county of residence. Upon receipt of the information, the county clerk and recorder of the county of prior residence shall cancel the elector's registration record. The county clerk and recorder of the county of prior residence shall cancel the

registration record only if the name and birth date or the name and social security number of the elector match.

(2) If a county clerk and recorder receives a notice from the secretary of state or from an election official in another state that the elector has registered to vote in another county, the county clerk and recorder of the county of prior residence shall cancel the registration record if the name and birth date or the name and social security number of the elector match.

Source: L. 97: Entire part added with relocations, p. 466, § 1, effective July 1.

Editor's note: This section was formerly numbered as 1-2-303(2) and (3).

1-2-604. Cancellation of electors with a multiple registration. (1) If the secretary of state's master list of registered electors shows an elector to be registered in more than one precinct in this state, the secretary of state shall notify every applicable county clerk and recorder each month of such multiple registration. Each county clerk and recorder who receives such notification shall cancel from the county's master lists of registered electors the name of the elector wherever it appears, except where it corresponds to the elector's most recent date of registration.

(2) Not later than fifteen days prior to each primary, general, odd-numbered year, or congressional vacancy election, the secretary of state shall furnish to each county clerk and recorder a list of registered electors who are registered to vote in more than one precinct in this state. The lists shall identify each elector as provided in section 1-2-301 (1).

(3) The county clerk and recorder of the county of prior residence shall cancel the registration record pursuant to subsection (1) of this section only if the name and birth date or the name and social security number of the elector match.

Source: L. 97: Entire part added with relocations, p. 466, § 1, effective July 1.

Editor's note: This section was formerly numbered as 1-2-302(5)(b) and 1-2-304(1).

1-2-605. Canceling registration. (1) (a) (I) Any county clerk and recorder communication by mail with all active registered electors shall be in the form of a voter information card, including but not limited to the registered elector's name and address, precinct number, and polling place, and shall be mailed by forwardable mail to the elector's address of record unless the elector has requested that said card be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k).

(II) The voter information card shall inform the elector of whether he or she is designated as a permanent mail-in voter and shall have a returnable portion that allows the elector to request designation as a permanent mail-in voter pursuant to section 1-8-104.5.

(b) For all electors whose communication pursuant to paragraph (a) of this subsection (1) is returned by the United States postal service as undeliverable at the elector's voting address, the county clerk and recorder may mark the registration record of that elector with the word "Inactive".

(c) All electors whose communication pursuant to paragraph (a) of this subsection (1) is not returned to the county clerk and recorder as undeliverable shall be deemed "Active", and no mark shall be made on the electors' registration records.

(2) A registered elector who is deemed "Active" but who fails to vote in a general election shall have the elector's registration record marked "Inactive (insert date)" by the county clerk and recorder following the general election.

(3) Any registered elector whose registration record has been marked "Inactive" shall be eligible to vote in any election where registration is required and the elector meets all other requirements.

(4) Any "Inactive" elector shall be deemed "Active" if:

(a) The elector updates the registration information with the county clerk and recorder; or

(b) The elector votes in any election conducted by a county clerk and recorder or any election for which the information has been provided to the clerk and recorder; or

(c) The elector applies for a mail-in ballot for any election which the county clerk and recorder conducts, regardless of whether or not the ballot is returned; or

(d) The elector completes, signs, and returns a confirmation card.

(5) If a mail ballot that was mailed pursuant to the requirements of this article to an elector who has been deemed "Active" is returned to the county clerk and recorder by the United States postal service as undeliverable, the county clerk and recorder shall send to the elector's address of record, unless the elector has requested that such communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k), a notice pursuant to section 1-2-509 by forwardable mail and a postage prepaid, preaddressed form by which the elector may verify or correct the address information. If the elector verifies that he or she resides in a county other than the county mailing the mail ballot, the county clerk and recorder shall mark the registration record of the elector "Canceled (insert date)", and the record shall be removed from the registration file of the county. If the elector fails to respond, the county clerk and recorder shall mark the registration record of that elector with the word "Inactive".

(6) (a) No later than ninety days after any general election, any registered elector whose registration record is marked "Inactive" and who has not previously been mailed a confirmation card shall be mailed a confirmation card by the county clerk and recorder.

(b) A confirmation card shall be mailed, shall have a place for an address change, shall be sent by forwardable mail to the elector's address of record, unless the elector has requested that such communication be sent to his or her deliverable mailing address pursuant to section 1-2-204 (2) (k), shall have a returnable portion that has the return postage prepaid and is preaddressed to the sending county clerk and recorder, and shall include a registration form to allow the elector to preregister in the county where the elector resides and to request designation as a permanent mail-in elector pursuant to section 1-8-104.5.

(7) If the county clerk and recorder receives no response to the confirmation card and the elector has been designated "Inactive" for two general elections since the confirmation card was mailed pursuant to the requirements of this article, the county clerk and recorder shall cancel the registration record of the elector.

(8) No later than ninety days following any general election, the county clerk and recorder shall furnish to the county chairpersons of the two major political parties a list containing the names, addresses, precinct numbers, and party affiliations of the electors whose names were canceled from the registration record pursuant to this section.

(9) As soon as is practicable after a general election, the county clerk and recorder shall transmit to the secretary of state, in a media format acceptable to the secretary of state, a list of the electors canceled from the registration records pursuant to this section.

(10) During the twenty-eight days prior to an election, if any previously registered elector finds that his or her registration record has been canceled during the prior six years pursuant to this section, the elector shall have the canceled notation deleted and shall be reinstated and given a "Certificate of Reinstatement" if the elector provides proof to the county clerk and recorder that he or she has not moved outside the county since the last three general elections. The "Certificate of Reinstatement" may be issued any time during the twenty-eight days before or on election day, and the elector may then vote at his or her precinct polling place or, if authorized by the county clerk and recorder, at the office of the county clerk and recorder. The county clerk and recorder shall not issue a provisional ballot in lieu of or to substitute for a "Certificate of Reinstatement" to an elector who is entitled to receive a "Certificate of Reinstatement" pursuant to this section.

Source: L. 97: Entire part added with relocations, p. 467, § 1, effective July 1. **L. 99:** (6)(a), (8), and (10) amended, p. 760, § 14, effective May 20; (1)(a), (5), (6)(b), and (7) amended, p. 279, § 4, effective August 4. **L. 2005:** (10) amended, p. 1396, § 10, effective June 6; (10) amended, p. 1431, § 10, effective June 6. **L. 2007:** (1)(a), (4)(c), and (6)(b) amended, p. 1777, § 11, effective June 1.

Editor's note: This section was formerly numbered as 1-2-224.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 183.

C.J.S. See 29 C.J.S., Elections, § 47.

Law reviews. For note, "Purged Voter Lists", see 44 Den. L.J. 279 (1967).

Annotator's note. Since § 1-2-605 is similar to § 1-2-224 as it existed prior to the 1997 amendment to

article 2 of title 1, which resulted in the relocation of provisions, a relevant case decided under former provisions similar to that section has been included in the annotations to this section.

The provision for purging the registration book does not violate the equal protection clause of amendment 14, U.S. Const. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Nor requirements of due process. The requirements of due process of law as set forth in § 25 of art. II, Colo. Const., and in amendment 14, U.S. Const., are not violated by the provision as it applies to persons whose names have been removed from the registration books. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

1-2-606. Cancellation by reason of criminal conviction in federal court. (1) If an elector whose residence is in the state of Colorado is convicted of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the secretary of state of Colorado. The notice shall include the name of the offender, the offender's age and residence address, the date of entry of the judgment, a description of the offenses of which the offender was convicted, and the sentence imposed by the court. The United States attorney shall additionally give the secretary of state written notice of the vacation of the judgment if the conviction is overturned.

(2) The secretary of state shall forward the information received pursuant to this section to the applicable county clerk and recorder of the county in which the offender resides.

(3) The county clerk and recorder shall cancel the registration of the elector as of the date of receipt of the information from the secretary of state, and the registration shall remain canceled until the offender reregisters to vote.

Source: L. 97: Entire part added with relocations, p. 470, § 1, effective July 1.

PART 7

VOTER REGISTRATION DRIVES

1-2-701. Registration of voter registration drive - training. (1) Before commencing a voter registration drive, a voter registration drive organizer shall file a statement of intent to conduct a voter registration drive with the secretary of state in the manner prescribed by the secretary of state by rules promulgated in accordance with article 4 of title 24, C.R.S. The voter registration drive organizer shall designate on the statement the agent of the voter registration drive, who shall be a resident of the state.

(2) A voter registration drive organizer shall fulfill the training requirements established by the secretary of state by rules promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 2005: Entire part added, p. 1396, § 11, effective June 6; entire part added, p. 1431, § 11, effective June 6.

1-2-702. Conducting a voter registration drive. (1) A voter registration drive organizer shall use the form of the voter registration application approved by the secretary of state by rule.

(2) A circulator working on a voter registration drive shall collect a voter registration application distributed by the voter registration drive and offered by an elector and deliver the application to the voter registration drive organizer. A voter registration drive organizer shall deliver the application to the county clerk and recorder of the county in which the elector resides according to the address indicated on the application. The application shall be delivered no later than fifteen business days after the application is signed, or, if the application is sent by mail, it shall be postmarked no later than fifteen business days after the application is signed; except that an application shall be delivered or mailed no later than the registration deadline set forth in section 1-2-201 (3), and an application signed less than thirty days before the registration deadline shall be delivered or postmarked no later than five business days after the application is signed.

(3) A voter registration drive organizer shall not compensate a circulator working on the voter registration drive based on the number of voter registration applications the circulator distributes or collects.

Source: L. 2005: Entire part added, p. 1397, § 11, effective June 6; entire part added, p. 1432, § 11, effective June 6. L. 2006: (2) amended, p. 2030, § 7, effective June 6. L. 2007: (2) amended, p. 1970, § 7, effective August 3.

Editor's note: Subsection (2) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-2-703. Violations - penalties. (1) A voter registration drive organizer that conducts a voter registration drive without filing the statement of intent with the secretary of state in accordance with section 1-2-701 or without maintaining a designated agent in the state or that uses a voter registration application form other than the form approved by the secretary of state by rule shall be punished by a fine not to exceed five hundred dollars.

(2) A voter registration drive organizer that fails to fulfill the training requirements established by the secretary of state in accordance with section 1-2-701 (2) shall be punished by a fine not to exceed five hundred dollars.

(3) (a) A voter registration drive organizer that willfully fails to deliver a voter registration application to the proper county clerk and recorder within the time prescribed by section 1-2-702 (2) shall be punished by a fine not to exceed fifty dollars for each business day of violation.

(b) A voter registration drive organizer that has been fined three times or more under paragraph (a) of this subsection (3) for failure to deliver a voter registration application to the proper county clerk and recorder in the manner and time prescribed by section 1-2-702 (2) shall be punished by an additional fine not to exceed one thousand dollars.

(c) A voter registration drive organizer that intentionally fails to deliver a voter registration application to the proper county clerk and recorder in the manner and time prescribed by section 1-2-702 (2) shall be punished by a fine not to exceed five thousand dollars.

(4) A voter registration drive organizer that compensates a circulator working on a voter registration drive based on the number of voter registration applications the circulator distributes or collects shall be punished by a fine not to exceed one thousand dollars.

Source: **L. 2005:** Entire part added, p. 1397, § 11, effective June 6; entire part added, p. 1432, § 11, effective June 6.
L. 2006: (3) amended, p. 2031, § 8, effective June 6. **L. 2007:** Entire section amended, p. 1970, § 8, effective August 3.

Editor's note: This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ARTICLE 3

Political Party Organization

Editor's note: This article was numbered as part of chapter 49 in C.R.S. 1963 and was codified as part of article 14 of this title in the original volume of C.R.S. 1973. For a detailed comparison, see the comparative table located in the back of the index. The substantive provisions of this article were repealed and reenacted in 1980, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973 and annual supplements to this volume; the comparative table located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

Cross references: For election offenses relating to political party organization, see part 3 of article 13 of this title.

1-3-100.3.	Definitions.	1-3-104.	Political party vacancy committees.
1-3-101.	Party affiliation required - residence.	1-3-105.	Powers of central committees.
1-3-102.	Precinct caucuses.	1-3-106.	Control of party controversies.
1-3-103.	Party committees.	1-3-107.	Party platforms.
		1-3-108.	Use of party name.

1-3-100.3. Definitions. As used in this article:

- (1) "Political party" means a major political party as defined in section 1-1-104 (22).

Source: L. 98: Entire section added, p. 256, § 3, effective April 13.

1-3-101. Party affiliation required - residence. (1) In order to vote at any precinct caucus, assembly, or convention of a political party, the elector shall be a resident of the precinct for thirty days, shall have registered to vote no later than twenty-nine days before the caucus, assembly, or convention, and shall be affiliated with the political party holding the caucus, assembly, or convention for at least two months as shown on the registration books of the county clerk and recorder; except that any registered elector who has attained the age of eighteen years or who has become a naturalized citizen during the two months immediately preceding the meeting may vote at any caucus, assembly, or convention even though the elector has been affiliated with the political party for less than two months.

(2) Notwithstanding subsection (1) of this section and section 1-2-101 (1) (b), an elector who moves from the precinct where registered during the twenty-nine days prior to any caucus shall be permitted to participate and vote at the caucus in the precinct of the elector's former residence but shall not be eligible for election as a delegate or for nomination as a precinct committeeperson in the former precinct.

(3) (a) No later than twenty-eight days prior to the date of the precinct caucus, the county clerk and recorder shall furnish without charge to each major political party in the county a list of the registered electors in the county who are affiliated with that political party.

(b) Repealed.

Source: L. 80: Entire article R&RE, p. 315, § 1, effective January 1, 1981. **L. 81:** Entire section amended, p. 302, § 1, effective April 29; (1) amended, p. 291, § 5, effective July 1. **L. 91:** Entire section amended, p. 618, § 28, effective May 1. **L. 92:** Entire article R&RE, p. 664, § 3, effective January 1, 1993. **L. 94:** (3) added, p. 1153, § 11, effective July 1; entire section amended, p. 1767, § 22, effective January 1, 1995. **L. 95:** (1) and (2) amended, p. 828, § 23, effective July 1. **L. 99:** Entire section amended, p. 760, § 15, effective May 20. **L. 2002:** (3) amended, p. 131, § 1, effective March 27. **L. 2007:** (3)(a) amended, p. 1988, § 2, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) The amendment to subsection (3) by House Bill 94-1286 was harmonized with the amendment to this section by House Bill 94-1294.

(3) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2002. (See L. 2002, p. 131.)

(4) Subsection (3)(a) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 238. **C.J.S.** See 29 C.J.S., Elections, § 211.

1-3-102. Precinct caucuses. (1) (a) (I) Precinct committee persons and delegates to county assemblies shall be elected at precinct caucuses that shall be held in a public place or in a private home that is open to the public during the caucus in or proximate to each precinct at a time and place to be fixed by the county central committee or executive committee of each political party. Except as otherwise provided by subparagraph (III) of this paragraph (a), the precinct caucuses shall be held on the third Tuesday in March, in each even-numbered year, which day shall be known as "precinct caucus day".

(II) Repealed.

(III) In a year in which a presidential election will be held, a political party may, by decision of its state central committee, hold its precinct caucuses on the first Tuesday in February. The committee shall notify the secretary of state and the clerk and recorder of each county in the state of the decision within five days after the decision.

(b) Any private home in which a precinct caucus is to be held shall be accessible to persons with disabilities in accordance with the rules of the county central committee or executive committee of each political party. The rules shall specify guidelines for determining whether a private home is accessible to persons with disabilities for purposes of this subsection (1) and for determining controversies regarding such accessibility.

(2) (a) The participants at the precinct caucus shall also elect two precinct committeepersons. Any person eighteen years of age or older may be a candidate for the office of precinct committeeperson if he or she has been a resident of the precinct for thirty days and has been affiliated with the political party holding the precinct caucus for a period of at least two months preceding the date of the precinct caucus; except that any person who has attained the age of eighteen years or who has become a naturalized citizen during the two months immediately preceding the precinct caucus may be a candidate for the office of precinct committeeperson even though he or she has been affiliated with the political party for less than two months as shown on the registration book of the county clerk and recorder. The two people receiving the highest number of votes at the caucus for precinct committeeperson shall be elected as the precinct committeepersons of the precinct. If two or more candidates for precinct committeeperson receive an equal and the second highest number of votes, or if three or more candidates receive an equal and the highest number of votes, the election shall be determined by lot by those candidates. All disputes regarding the election of precinct committeepersons shall be determined by the credentials committees of the respective party assemblies. The names of the committeepersons elected shall be certified to the county assembly of the political party by the officers of the caucus. The county assembly shall ratify the list of committeepersons. The presiding officer and secretary of the county assembly shall file a certified list of the names and addresses, by precinct, of those persons elected as precinct committeepersons with the county clerk and recorder within four days after the date of the county assembly.

(b) Within ten days after the boundaries of an existing precinct are changed or a new precinct is created, the members of the party county central committee vacancy committee shall select members to fill the vacancies for precinct committeepersons.

(c) Repealed.

(d) The person elected as committeeperson at the caucus shall assume the office immediately following the caucus. Causes for removal of the elected committeeperson from office shall include, but not be limited to, the following:

(I) In the case of removal by the credentials committee at the county assembly, the person does not meet the qualifications for committeeperson;

(II) In the case of removal by the county central committee, the person has moved from the precinct or has changed affiliation.

(III) Repealed.

(3) and (4) Repealed.

Source: **L. 80:** Entire article R&RE, p. 315, § 1, effective January 1, 1981. **L. 81:** (2)(a) and (2)(b) amended, (2)(c) and (2)(d) added, and (3) and (4) repealed, pp. 304, 309, §§ 1, 12, effective January 1, 1982. **L. 82:** (2)(a) amended, p. 216, § 1, effective February 19. **L. 85:** (1) amended, p. 248, § 3, effective July 1. **L. 90:** (1) amended, p. 303, § 3, effective June 8. **L. 91:** (2)(a) amended, p. 618, § 29, effective May 1. **L. 92:** Entire article R&RE, p. 665, § 3, effective January 1, 1993. **L. 93:** (2)(c) and (2)(d)(III) repealed, p. 1404, § 28, effective July 1. **L. 94:** (2)(a) amended, p. 1768, § 23, effective January 1, 1995. **L. 95:** (2)(a) amended, p. 828, § 24, effective July 1. **L. 98:** (1) amended, p. 633, § 4, effective May 6. **L. 99:** (1) and (2)(a) amended, p. 761, § 16, effective May 20; (1) amended, p. 100, § 1, effective August 4; (2)(d)(II) amended, p. 159, § 6, effective August 4. **L. 2001:** (1) amended, p. 1001, § 2, effective August 8. **L. 2002:** (1)(a) amended, p. 132, § 2, effective March 27. **L. 2005:** (1)(a)(I) amended, p. 1398, § 12, effective June 6; (1)(a)(I) amended, p. 1433, § 12, effective June 6. **L. 2007:** (1)(a)(I) amended and (1)(a)(III) added, p. 1988, § 3, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-206 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to subsection (1) by Senate Bill 99-025 and Senate Bill 99-027 were harmonized.

(3) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective July 1, 2002. (See L. 2002, p. 132.)

(4) Subsections (1)(a)(I) and (1)(a)(III) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Applied in *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982).

1-3-103. Party committees. (1) (a) At its own precinct caucus, each political party shall elect two committeepersons for each election precinct as provided in section 1-3-102. Each committeeperson shall hold the position for a term of two years after the date of the election, and each shall serve until a successor is duly elected or appointed and commences the term of office. In case of a vacancy in the office of precinct committeeperson, the members of the county central committee vacancy committee shall select a successor to fill the vacancy. The person selected shall be a resident of the precinct in which the vacancy occurred.

(b) (I) All of the precinct committeepersons of the political party in the county, all of the district captains and co-captains, if any, of the political party in the county, and the county party officers selected pursuant to paragraph (c) of this subsection (1), together with the elected county public officials, the state senators and representatives, the United States senators and representatives, the elected state public officials, and the district attorney, who are members of the party and who reside within the county, shall constitute the membership of the county central committee, but the multiple office shall not entitle a person to more than one vote, excluding proxies.

(II) In counties which have adopted a five-commissioner board or county home rule, such county central committee shall be constituted of all the precinct committeepersons from precincts in the county commissioner district, together with the officers selected pursuant to this subparagraph (II), and the state senators and representatives and the district attorney who are members of the party and who reside within the district. Such county central committee shall meet on the same date and select a chairperson and

vice-chairperson in the same manner as the county central committee. Such central committee shall select a vacancy committee for the purpose of filling vacancies in the office of county commissioner held by members of the political party.

(c) Each county central committee shall meet on a date which falls between February 1 and February 15 of the odd-numbered years to organize by selecting a chairperson, a vice-chairperson, and a secretary and any other officers provided for in the county rules and shall select a vacancy committee authorized to fill vacancies in the county central committee and the offices held by members of the county central committee and shall select a separate vacancy committee to fill vacancies in the office of county commissioner held by members of the political party.

(d) Except as provided in paragraph (d) of subsection (4), paragraph (b) of subsection (5), and paragraph (b) of subsection (6) of this section, all other central committees shall meet on a date which falls between February 15 and April 1 of the odd-numbered years to organize by electing a chairperson, a vice-chairperson, and a secretary and shall select a vacancy committee authorized to fill vacancies in the central committees and in district and state offices held by members of the political party.

(e) Repealed.

(2) (a) The state central committee shall consist of the chairpersons and vice-chairpersons of the several party county central committees, together with the elected United States senators, representatives in congress, governor, lieutenant governor, secretary of state, state treasurer, attorney general, members of the board of regents, members of the state board of education, state senators, and state representatives, and any additional members as provided for by the state central committee bylaws. Two additional members shall be allowed the political party from each county that polled at least ten thousand votes at the last preceding general election for its candidate for governor or president of the United States. Two additional members shall be allowed for each additional ten thousand votes or major portion thereof so polled in the county. The additional members shall be elected by the county central committee of the political party.

(b) Within ten days after the adjournment of the organizational meeting of the state central committee of any political party, the chairperson and secretary of the state central committee shall file under oath with the secretary of state a full and complete roll of the membership of the state central committee.

(3) (a) The chairpersons and vice-chairpersons of the several party county central committees entirely or partially, who reside within each congressional district, together with the elected congressperson, the elected state board of education member of the party for the congressional district, the elected board of regents member of the party for the congressional district, and the state senators and representatives of the party who reside within the congressional district, shall constitute the party congressional central committee.

(b) If, in any county, or portion thereof, within the congressional district, any political party has polled at least ten thousand votes at the last preceding general election for its candidate for governor or president of the United States, the county shall be entitled to two additional members of the congressional central committee of the political party. Two additional members shall be allowed for each additional ten thousand votes or major portion thereof so polled by the party in the county or portion thereof within the congressional district. The additional members shall reside within the congressional district and shall be elected by those members of the county central committee of the political party who reside within the congressional district. The additional members shall be as equally divided as possible between male and female.

(c) Other members of the congressional central committees may be provided for by the state central committee bylaws.

(d) Each party congressional district central committee shall elect its own chairperson, vice-chairperson, and secretary and shall adopt its own bylaws concerning its conduct, which shall include but need not be limited to requirements for eligibility to vote in the congressional district assembly.

(e) The chairperson of each party congressional district central committee shall fix the time and place of each meeting of the committee, shall fix the time and place of its congressional district assembly, and shall preside over each meeting and the congressional district assembly.

(4) (a) The chairpersons and vice-chairpersons of the several party county central committees, who reside within each judicial district, together with the elected district attorney of the party for the judicial district, shall constitute the judicial district central committee.

(b) If, in any county within the judicial district, any political party has polled at least ten thousand votes at the last preceding general election for its candidate for governor or president of the United States, the county shall be entitled to two additional members of the judicial district central committee of the political party. Two additional members shall be allowed for each additional ten thousand votes or major portion thereof polled in the county. The additional members shall be elected by those members of the county central committee of the political party who reside within the judicial district. The additional members shall be as equally divided as possible between male and female.

(c) Other members of the judicial district central committee may be provided for by the state central committee bylaws.

(d) When a judicial district is comprised of one county or a portion of one county, the judicial district central committee shall consist of all elected precinct committeepersons, the elected district attorney, and the chairperson, the vice-chairperson, and the secretary of the county central committee, all of whom are of the party and reside in that judicial district. The committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as a party county central committee.

(e) Each party judicial district central committee shall elect its own chairperson, vice-chairperson, and secretary and shall adopt its own bylaws concerning its conduct, which shall include but need not be limited to requirements for eligibility to vote in the judicial district assembly.

(f) The chairperson of each party judicial district central committee shall fix the time and place of each meeting of the committee, shall fix the time and place of its district assembly, and shall preside over each meeting and the judicial district assembly.

(5) (a) When a state senatorial district is comprised of one or more whole counties or of a part of one county and all or a part of one or more other counties, a state senatorial central committee shall consist of the chairpersons, vice-chairpersons, and secretary of the several party county central committees, who reside within the state senatorial district. If any of those officers do not reside in the state senatorial district, replacements shall be provided who do reside in the district. The state senatorial central committee shall also include the elected state senator of the party for the state senatorial district, the state representatives of the party who reside within the state senatorial district, and a chairperson, vice-chairperson, and secretary of the state senatorial central committee, who may or may not be elected from among, but shall be elected by, the chairpersons, vice-chairpersons, and secretary, the state senator, and the state representatives.

(b) When a state senatorial district is comprised of a portion of one county, a state senatorial central committee shall consist of the elected precinct committeepersons, the elected state senator, the elected state representatives, and a chairperson, vice-chairperson, and secretary of the state senatorial central committee, all of whom are of the party and reside in that senatorial district. In addition, the chairperson, vice-chairperson, and secretary of the party county central committee shall be members of each state senatorial central committee, who reside within the senatorial district. The chairperson, vice-chairperson, and secretary of the state senatorial central committee may or may not be elected from among, but shall be elected by, the state senatorial central committee. The committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as the party county central committee.

(6) (a) When a state representative district is comprised of one or more whole counties or of a part of one county and all or a part of one or more other counties, a state representative central committee shall consist of the chairpersons, vice-chairpersons, and secretary of the several party county central committees, who reside within the state representative district. If any of those officers do not reside in

the state representative district, replacements shall be provided who do reside in the district. The state representative central committee shall also include the elected state representative of the party for the state representative district, each state senator of the party who resides within that representative district, and a chairperson, vice-chairperson, and secretary of the state representative central committee, who may or may not be elected from among, but shall be elected by, the chairpersons, vice-chairpersons, and secretary, the state representative, and the state senators.

(b) When a state representative district is comprised of a portion of one county, a state representative central committee shall consist of the elected precinct committeepersons, the elected state representative, the elected state senators, and a chairperson, vice-chairperson, and secretary of the state representative central committee, all of whom are of the party and reside in that state representative district. In addition, the chairperson, vice-chairperson, and secretary of the party county central committee, who reside within the state representative district, shall be members of the state representative central committee. The chairperson, vice-chairperson, and secretary of the state representative district central committee may or may not be elected from among, but shall be elected by, the state representative central committee. The committee shall meet on the same date and select a chairperson and vice-chairperson in the same manner as the party county central committee.

(7) No later than thirty days after the organizational meetings authorized by this section, the secretary of each party central committee prescribed by this section shall file with the secretary of state a list of the names, addresses, and telephone numbers of each of the officers elected, together with a list of the names, addresses, and telephone numbers of the vacancy committee selected.

(8) All references to elected public officials in this article shall include those public officials appointed to fill vacancies in elective offices.

(9) (a) No later than ninety days after the organization of the state central committees of the two major political parties in each odd-numbered year, each committee shall adopt in its bylaws or rules its general guidelines and regulations for all county party matters. Such bylaws or rules shall establish a procedure for the selection of delegates to any party assembly that is consistent with party practice. Any method under such procedure for choosing or allocating delegates in a county based on the number of votes cast at an election for a particular candidate shall be uniform among the counties so that all types of ballots are counted or not counted for purposes of determining the number of votes cast. Any county central committee may adopt its own rules and regulations in conformance with those of the state central committee. In the absence of county rules pertaining to specific items, the party's state central committee's guidelines, rules, and regulations shall apply. Each state central committee shall file its party's bylaws or rules with the secretary of state no later than the first Monday in February in each even-numbered year and, if filed prior to that date, the bylaws or rules may be amended until that date. No bylaw or rule may be filed or amended after the first Monday in February in each even-numbered year. Where the bylaws or rules are not filed in accordance with this section, the party's state central committee, as well as the party's county central committee, shall be subject to the code through the general election of the same year.

(b) Repealed.

(10) (a) Each party state senatorial central committee and each party state representative central committee shall elect its own chairperson, vice-chairperson, and secretary and adopt its own bylaws concerning its conduct, which shall include, but not be limited to, the listing of requirements for eligibility to vote in the state senatorial or state representative district assembly.

(b) The chairperson of each party state senatorial central committee and each party state representative central committee shall fix the time and place of meetings of the central committee, shall fix the time and place of its district assembly, and shall preside over the meetings and district assembly.

Source: L. 80: Entire article R&RE, pp. 316, 421, §§ 1, 1, effective January 1, 1981. **L. 81:** (1)(a), (1)(b), (4)(d), (5)(b), and (6)(b) amended, p. 305, § 2, effective January 1, 1982. **L. 82:** (1)(e) added, p. 218, § 1, effective April 2. **L. 83:** (1)(b)(II), (1)(c), (1)(d), and (7) amended, p. 360, § 1, effective May 20. **L. 85:** (3)(b) and (4)(b) amended and (3)(d), (3)(e), (4)(e), and (4)(f) added, pp. 255, 256, §§ 5, 6, effective May 31. **L. 87:** (5) and (6) amended, p. 284, § 5, effective June 26.

L. 89: (9) amended, p. 313, § 1, effective April 12; (3)(a), (4)(a), (5), and (6) amended, p. 301, § 5, effective May 9. **L. 91:** (5)(a), (6)(a), and (9) amended, p. 619, § 30, effective May 1. **L. 92:** (9) amended, p. 591, § 2, effective April 10; entire article R&RE, p. 666, § 3, effective January 1, 1993. **L. 93:** (2)(b) amended, p. 1765, § 2, effective June 6. **L. 96:** (9) amended, p. 1738, § 19, effective July 1. **L. 98:** (9) amended, p. 814, § 1, effective August 5. **L. 99:** (7) and (9) amended, p. 761, § 17, effective May 20. **L. 2002:** (9) amended, p. 132, § 3, effective March 27.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-108 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Subsection (1)(e) provided for the repeal of subsection (1)(e), effective January 5, 1985. (See L. 82, p. 218.)

(3) Amendments to subsection (9) by Senate Bill 92-194 were harmonized with House Bill 92-1333.

(4) Subsection (9)(b)(III) provided for the repeal of subsection (9)(b), effective July 1, 2002. (See L. 2002, p. 132.)

Cross references: For state senatorial districts, see § 2-2-102; for state representative districts, see § 2-2-202.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 199.

C.J.S. See 29 C.J.S., Elections, § 154.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

It is the duty of the state central committee of a political party to recognize a county chairman as one of its members. *People ex rel. Vick Roy v. Republican State Cent. Comm.*, 75 Colo. 312, 226 P. 656 (1924).

Filing roll of members not condition precedent to determine factional disputes. The filing of a roll of members of the state central committee of a

political party with the secretary of state, as required by this section, is not a condition precedent to the exercise by the committee of the power to determine factional disputes in subordinate divisions of the party. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903).

Faction estopped to deny authority. Where it appears that a faction challenging the power of the committee upon that ground has heretofore invoked the jurisdiction of the committee to act upon the controversy, it is estopped to deny the committee's authority. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903)

1-3-104. Political party vacancy committees. All vacancies in state, congressional, judicial, senatorial, representative, or county commissioner party central committees shall be filled by the respective party county central committees pursuant to section 1-3-103.

Source: **L. 80:** Entire article R&RE, p. 320, § 1, effective January 1, 1981. **L. 92:** Entire article R&RE, p. 671, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-110 (2) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 167.

1-3-105. Powers of central committees. (1) Subject to the provisions of section 1-3-106 (2), the state central committee has the power to make all rules for party government.

(2) Any state, congressional, judicial, senatorial, representative, county commissioner, or county central committee may select a managing or executive committee and may authorize the executive committee to exercise any and all powers conferred upon the respective central committees.

Source: **L. 80:** Entire article R&RE, p. 320, § 1, effective January 1, 1981. **L. 92:** Entire article R&RE, p. 671, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-110 (1) and (3) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 169.

1-3-106. Control of party controversies. (1) The state central committee of any political party in this state has full power to pass upon and determine all controversies concerning the regularity of the organization of that party within any congressional, judicial, senatorial, representative, or county commissioner district or within any county and also concerning the right to the use of the party name. The state central committee may make rules governing the method of passing upon and determining controversies as it deems best, unless the rules have been provided by the state convention of the party as provided in subsection (2) of this section. All determinations upon the part of the state central committee shall be final.

(2) From the time the state convention of the party convenes until the time of its final adjournment, the state convention has all the powers given by subsection (1) of this section to the state central committee, but not otherwise. The state convention of the party may also provide rules that shall govern the state central committee in the exercise of the powers conferred upon the committee in subsection (1) of this section.

Source: **L. 80:** Entire article R&RE, p. 320, § 1, effective January 1, 1981. **L. 92:** Entire article R&RE, p. 671, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-109 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For congressional districts, see § 2-1-101.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 202.

C.J.S. See 29 C.J.S., Elections, § 169.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The power granted to the state central committee of a political party to determine party controversies is constitutional. This grant of power was not in violation of the former provisions concerning district court jurisdiction, now § 9 of art. VI, Colo. Const., on the grounds that it divests the district courts of jurisdiction in such causes and confers it upon another tribunal, as the district courts have no such jurisdiction in the absence of a statute conferring it. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903).

And the committee, or the state convention while in session, has exclusive jurisdiction to determine all controversies between factions of the same party as to which is the regular organization and entitled to the party name and to make and file nominations for office under

the party name within any district, county, or city of the state. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903).

Factional disputes of subordinate divisions of a political party must be referred to the state central committee of that political party. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903).

And the courts have no jurisdiction in such factional and internal disputes between members of the same party although the committee may not have passed thereon. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903).

And prohibition lies to prevent court from taking further action. Where a district court is proceeding without jurisdiction to determine a factional dispute between members of the same political party, and the parties objecting to such proceeding have no speedy and adequate remedy at law, on petition to supreme court a writ of prohibition will issue to prevent the court from taking any further action in the matter except to dismiss the proceedings. *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903).

1-3-107. Party platforms. (1) Any assembly or convention of any political party may formulate, adopt, and publish a platform for the political subdivision which the assembly or convention represents.

(2) Repealed.

Source: L. 80: Entire article R&RE, p. 321, § 1, effective January 1, 1981. **L. 85:** (2) repealed, p. 270, § 37, effective May 31. **L. 92:** Entire article R&RE, p. 672, § 3, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-111 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-3-108. Use of party name. No person, group of persons, or organization shall use the name or address of a political party, in any manner, unless the person, group of persons, or organization has received permission to use the name or address from the executive committee of the political party.

Source: L. 87: Entire section added, p. 285, § 6, effective June 26. **L. 92:** Entire article R&RE, p. 672, § 3, effective January 1, 1993.

ARTICLE 4

Elections - Access to Ballot by Candidates

Editor's note: This article was numbered as article 11 of chapter 49, C.R.S. The substantive provisions of this article were repealed and reenacted in 1980, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973 and annual supplements to this volume; the comparative table located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

Cross references: For election offenses relating to access to ballot by candidates, see part 4 of article 13 of this title.

Law reviews: For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minor party ballot access, see 61 Den. L.J. 217 (1984); for article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minor party ballot access, see 62 Den. U. L. Rev. 101 (1985).

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PART 1

PRIMARY ELECTIONS

1-4-101. Primary election nominations made. (1) A primary election shall be held at the regular polling places in each precinct on the second Tuesday of August in even-numbered years to nominate candidates of political parties to be voted for at the succeeding general election. Except as provided by section 1-4-1304 (1.5), only a major political party, as defined in section 1-1-104 (22), shall be entitled to nominate candidates in a primary election.

(2) Each political party that is entitled to participate in the primary election shall have a separate party ballot. The primary election of all political parties shall be held at the same time and at the same polling places and shall be conducted by the same election officials.

(3) All nominations by major political parties for candidates for United States senator, representative in congress, all elective state, district, and county officers, and members of the general assembly shall be made by primary elections; except that, for general elections occurring after January 1, 2001, nominations by major political parties for candidates for lieutenant governor shall not be made by primary elections and shall be made pursuant to section 1-4-502 (3). Neither the secretary of state nor any county clerk and recorder shall place on the official general election ballot the name of any person as a candidate of any major political party who has not been nominated in accordance with the provisions of this article, or who has not been affiliated with the major political party for at least twelve months unless otherwise provided by law, or who does not meet residency requirements for the office, if any. The information found on the voter registration record of the county of current or previous residence of the person seeking to be placed on the ballot is admissible as prima facie evidence of compliance with this article.

(4) Except as otherwise provided in this code, all primary elections shall be conducted in the same manner as general elections insofar as the general election provisions are applicable, and the election officers for primary elections have the same powers and shall perform the same duties as those provided by law for general elections.

(5) All expenses incurred in the preparation or conduct of the primary election shall be paid out of the treasury of the county or state, as the case may be, in the same manner as for general elections.

Source: L. 80: Entire article R&RE, p. 321, § 1, effective January 1, 1981. **L. 81:** (1) amended, p. 307, § 3, effective January 1, 1982. **L. 83:** (3) amended, p. 350, § 9, effective July 1. **L. 85:** (1) amended, p. 248, § 4, effective July 1. **L. 86:** (3) amended, p. 396, § 6, effective April 17. **L. 88:** (3) amended, p. 293, § 1, effective May 29. **L. 89:** (3) amended, p. 314, § 2, effective April 12. **L. 91:** (3) amended, p. 620, § 31, effective May 1. **L. 92:** Entire part amended, p. 672, § 4, effective January 1, 1993. **L. 98:** (1) to (3) amended, p. 256, § 4, effective April 13. **L. 99:** (3) amended, p. 159, § 7, effective August 4. **L. 2000:** (3) amended, p. 2027, § 1, effective August 2. **L. 2003:** (1) and (2) amended, p. 1309, § 4, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-202 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the definition of political parties, see § 1-1-104 (25); for the conduct of primary elections, see part 2 of article 7 of this title.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 203, 204, 227.

C.J.S. See 29 C.J.S., Elections, § 200.

The primary election law was intended to and did take from political bosses the right to control in the nominating of candidates for office; that it had surrounded the primary election with all the safeguards provided for general elections; and that the persons who are chosen by

the voters to represent them, in matters preliminary to nominations, are entitled to hold the position for which they have been so chosen during the term prescribed by law. *People ex rel. Vick Roy v. Republican State Cent. Comm.*, 75 Colo. 312, 226 P. 656 (1924) (concurring opinion) (decided under former law).

Compliance with residence requirement can be proven by means other than the voter registration page. *Romero v. Sandoval*, 685 P.2d 772 (Colo. 1984).

1-4-102. Methods of placing names on primary ballot. All candidates for nominations to be made at any primary election shall be placed on the primary election ballot either by certificate of designation by assembly or by petition.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-203 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-4-103. Order of names on primary ballot. Candidates designated and certified by assembly for a particular office shall be placed on the primary election ballot in the order of the vote received at the assembly. The candidate receiving the highest vote shall be placed first in order on the ballot, followed by the candidate receiving the next highest vote. To qualify for placement on the primary election ballot, a candidate must receive thirty percent or more of the votes of the assembly. The names of two or more candidates receiving an equal number of votes for designation by assembly shall be placed on the primary ballot in the order determined by lot in accordance with section 1-4-601 (2). Candidates by petition for any particular office shall follow assembly candidates and shall be placed on the primary election ballot in an order established by lot.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 86:** Entire section amended, p. 1214, § 1, effective May 30. **L. 87:** Entire section amended, p. 286, § 7, effective June 26. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-14-209 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 218.

The fact that several candidates have been designated by the party assembly does not preclude a petition candidate from having his petition accepted by the secretary of state (or county clerk, as the case may be) and his name listed as a candidate for his party's nomination on the primary ballot. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968) (decided under former law).

Petitioner's name allowed to appear on ballot. Where the secretary of state accepted and approved the petition filed by petitioner and no objections were filed as to the validity of his petition, there was no issue in reference to his right to appear on the primary ballot as a candidate by petition and his name did appear. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968) (decided under former law).

1-4-104. Party nominees. Candidates voted on for offices at primary elections who receive a plurality of the votes cast shall be the respective party nominees for the respective offices. If more than one office of the same kind is to be filled, the number of candidates equal to the number of offices to be filled receiving the highest number of votes shall be the nominees of the political party for the offices. The names of the nominees shall be printed on the official ballot prepared for the ensuing general election.

Source: **L. 80:** Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993. **L. 98:** Entire section amended, p. 256, § 5, effective April 13. **L. 2003:** Entire section amended, p. 1309, § 5, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-15-109 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-4-105. Defeated candidate ineligible. No person who has been defeated as a candidate in a primary election shall be eligible for election to the same office by ballot or as a write-in candidate in the next general election unless the party vacancy committee nominates that person.

Source: **L. 80:** Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 91:** Entire section amended, p. 620, § 32, effective May 1. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-110 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 204.

C.J.S. See 29 C.J.S., Elections, § 240.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A defeated candidate in a primary election is not barred from being named as a candidate to fill a vacancy occasioned by the death of the regular nominee for the office. *Armstrong v. Simonson*, 84 Colo. 472, 271 P. 627 (1928).

PART 2

GENERAL ELECTIONS

1-4-201. Time of holding general election. A general election shall be held in all precincts in this state on the Tuesday succeeding the first Monday of November in every even-numbered year.

Source: **L. 80:** Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the hours of voting, see § 1-7-101.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 1;
26 Am. Jur.2d, Elections, §§ 265-267.

C.J.S. See 29 C.J.S., Elections, §§ 141, 142.

Law reviews. For note, "Equitable Supervision
of Elections", see 9 Rocky Mt. L. Rev. 279 (1937).

1-4-202. United States senators. At the general election in 1984 and every six years thereafter, one United States senator shall be elected for the next term; and, at the general election in 1986 and every six years thereafter, one United States senator shall be elected for the next term.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-104 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Law reviews. For article, "The Constitutionality of Term
Limitation", see 19 Colo. Law. 2193 (1990).

1-4-203. Representatives in congress. At every general election, the number of representatives in congress to which the state is entitled shall be elected.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-105 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For congressional districts, see § 2-1-101.

ANNOTATION

Law reviews. For article, "Reapportionment, The
Courts, and the Voting Rights Act: A Resegregation of the

Political Process?", see 56 U. Colo. L. Rev. 1 (1984). For
article, "The Constitutionality of Term Limitation", see 19
Colo. Law. 2193 (1990).

1-4-204. State and district officers. At the general election in 1982 and every fourth year thereafter, the following state officers shall be elected: One governor, one lieutenant governor, one secretary of state, one state treasurer, and one attorney general. The lieutenant governor shall be elected jointly with the governor. At every general election, the number of members of the state house of representatives to which each representative district is entitled shall be elected in that district. Candidates for the offices of regents of the university of Colorado, state senators, members of the state board of education, and district attorneys shall be voted on at the general election immediately prior to the expiration of the regular terms for those offices.

Source: L. 80: Entire article R&RE, p. 322, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 673, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For terms of office for regents of the university of Colorado, see § 12 of art. IX, Colo. Const.; for terms of office for state senators, see § 2-2-103; for terms of office for members of the state board of education, see § 22-2-105; for terms of office for district attorneys, see § 13 of art. VI, Colo. Const.; for the election of presidential electors, see § 1-4-301; for the election of state officers, see §§ 1, 3, and 4 of art. IV, Colo. Const.; for the election of district judges, see §§ 10 and 11 of art. VI, Colo. Const.; for the election of district attorneys, see § 13 of art. VI, Colo. Const.; for the division of county into districts for the purpose of electing county commissioners, see § 30-10-306.

ANNOTATION

Law reviews. For article, "The Constitutionality of Term Limitation", see 19 Colo. Law. 2193 (1990).

1-4-205. County commissioners. (1) (a) Members of the board of county commissioners shall be elected in each county, excluding a city and county, for a term of four years.

(b) No person shall be a county commissioner unless that person is a registered elector and has resided in the district for at least one year prior to the election.

(2) Each county having a population of less than seventy thousand shall have three county commissioners, any two of whom shall constitute a quorum for the transaction of business. One commissioner shall be elected at the general election in 1982 and every four years thereafter, and two commissioners shall be elected at the general election in 1984 and every four years thereafter.

(3) (a) In each county having a population of seventy thousand or more, the board of county commissioners may consist either of three members, any two of whom shall constitute a quorum for the transaction of business, or of five members, any three of whom shall constitute a quorum for the transaction of business.

(b) If the board consists of three commissioners, they shall be elected as provided in subsection (2) of this section and as provided in section 30-10-306.7 (5), C.R.S.

(c) In any county having a population of seventy thousand or more, the membership of the board of county commissioners may be increased from three to five members pursuant to section 30-10-306.5, C.R.S., or decreased from five to three members pursuant to section 30-10-306.7 (2) (a) (II), C.R.S.

Source: **L. 80:** Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 88:** (3)(b) and (3)(c) amended, p. 1113, § 3, effective April 9; (1) amended, p. 297, § 1, effective January 1, 1989. **L. 92:** Entire part amended, p. 674, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-106 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For election and terms of county officers, see §§ 6 and 8 of art. XIV, Colo. Const.; for statutes relating to county officers generally, see article 10 of title 30.

ANNOTATION

Law reviews. For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961).

Courts would not inquire into county's increase in commissioners. Where a county entitled to increase the number of its commissioners from three to five, did make such increase, and the people of the county acquiesced therein and thereafter elected successors to the added members of the board so as to keep the number at five, in an action brought by private individuals twenty years after such increase was made to test the right of the successors of the added members of the board to the office, the courts will not inquire into the regularity of the

proceeding making such increase. *People ex rel. Lankford v. Long*, 32 Colo. 486, 77 P. 251 (1904).

And court action was not maintainable. In an action against two county commissioners jointly to test their right to hold their offices on the ground that the board was illegally increased from three to five members and that respondents were the successors in office of the two illegally added members of the board, where it appears that one of the respondents was not a successor of either of the added members of the board, a joint action could not be maintained against respondents. *People ex rel. Lankford v. Long*, 32 Colo. 486, 77 P. 251 (1904).

1-4-206. Other county officers. At the general election in 1982 and every four years thereafter, one county clerk and recorder, who shall be ex officio recorder of deeds and clerk of the board of county commissioners; one sheriff qualified pursuant to section 30-10-501.5, C.R.S.; one coroner qualified pursuant to section 30-10-601.5, C.R.S.; one treasurer, who shall be collector of taxes; one county superintendent of schools, unless the office of county superintendent of schools is abolished at a general election; one county surveyor; and one county assessor shall be elected in each county, excluding a city and county. The term of office of all such officials shall be four years.

Source: **L. 80:** Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 90:** Entire section amended, p. 304, § 5, effective June 8. **L. 92:** Entire part amended, p. 674, § 4, effective January 1, 1993. **L. 2003:** Entire section amended, p. 1830, § 1, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-16-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For county officers, election, term, and salary, see § 8 of art. XIV, Colo. Const.

PART 3

PRESIDENTIAL ELECTIONS

1-4-301. Time of holding presidential elections. At the general election in 1984 and every fourth year thereafter, the number of presidential electors to which the state is entitled shall be elected.

Source: **L. 80:** Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 674, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-16-103 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-4-302. Party nominations to be made by convention. (1) Any convention of delegates of a political party or any committee authorized by resolution of the convention may nominate presidential electors.

(2) All nominations for vacancies for presidential electors made by the convention or a committee authorized by the convention shall be certified by affidavit of the presiding officer and secretary of the convention or committee.

Source: **L. 80:** Entire article R&RE, p. 323, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-14-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For methods of nomination, see §§ 1-4-502 and 1-4-503; for protests of designations and nominations, see § 1-4-909.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 225. **C.J.S.** See 29 C.J.S., Elections, § 185.

1-4-303. Nomination of unaffiliated candidates. (1) No later than one hundred forty days before the general election, a person who desires to be an unaffiliated candidate for the office of

president or vice president of the United States shall submit to the secretary of state either a notarized candidate's statement of intent together with a nonrefundable filing fee of five hundred dollars or a petition for nomination pursuant to the provisions of section 1-4-802 and shall include either on the petition or with the filing fee the names of registered electors who are thus nominated as presidential electors. The acceptance of each of the electors shall be endorsed as appended to the first or last page of the nominating petition or the filing fee.

(2) Notwithstanding the amount specified for the fee in subsection (1) of this section, the secretary of state by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: **L. 80:** Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993. **L. 95:** Entire section amended, pp. 885, 858, §§ 1, 114, effective July 1. **L. 98:** Entire section amended, p. 1317, § 4, effective June 1. **L. 99:** (1) amended, p. 762, § 18, effective May 20. **L. 2005:** (1) amended, p. 1398, § 13, effective June 6; (1) amended, p. 1433, § 13, effective June 6.

Editor's note: Amendments to this section by House Bill 95-1022 and House Bill 95-1241 were harmonized.

1-4-304. Presidential electors. (1) The presidential electors shall convene at the capital of the state, in the office of the governor at the capitol building, on the first Monday after the second Wednesday in the first December following their election at the hour of 12 noon and take the oath required by law for presidential electors. If any vacancy occurs in the office of a presidential elector because of death, refusal to act, absence, or other cause, the presidential electors present shall immediately proceed to fill the vacancy in the electoral college. When all vacancies have been filled, the presidential electors shall proceed to perform the duties required of them by the constitution and laws of the United States. The vote for president and vice president shall be taken by open ballot.

(2) The secretary of state shall give notice in writing to each of the presidential electors of the time and place of the meeting at least ten days prior to the meeting.

(3) The secretary of state shall provide the presidential electors with the necessary blanks, forms, certificates, or other papers or documents required to enable them to properly perform their duties.

(4) If desired, the presidential electors may have the advice of the attorney general of the state in regard to their official duties.

(5) Each presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.

Source: **L. 80:** Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993. **L. 2001:** (5) amended, p. 1002, § 3, effective August 8.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-17-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 6.

1-4-305. Compensation. Every presidential elector of this state who attends and votes for those officers at the time and place appointed by law is entitled to receive the sum of five dollars per day for each day's attendance at the election and fifteen cents per mile for each mile traveled in going to and

returning from the place where the electors meet, by the most usual route traveled, to be paid out of the general fund. The controller shall audit the amount and draw a warrant for the same.

Source: **L. 80:** Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 92:** Entire part amended, p. 675, § 4, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-17-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

PART 4

CONGRESSIONAL VACANCY ELECTIONS

1-4-401. Time of congressional vacancy elections. (1) When any vacancy occurs in the office of representative in congress from this state, the governor shall set a day to hold an election to fill the vacancy and cause notice of the election to be given as required in part 2 of article 5 of this title; but no congressional vacancy election shall be held during the ninety days prior to a general election or less than seventy-five days or more than ninety days after the vacancy occurs.

(2) A congressional vacancy election shall be conducted and the results thereof surveyed and certified in all respects as nearly as practicable in like manner as for general elections, except as otherwise provided in this code.

Source: **L. 80:** Entire article R&RE, p. 324, § 1, effective January 1, 1981. **L. 83:** (1) amended, p. 350, § 10, effective July 1. **L. 92:** Entire part amended, p. 676, § 4, effective January 1, 1993. **L. 93:** (1) amended, p. 1765, § 3, effective June 6. **L. 95:** (1) amended, p. 829, § 25, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For registration for congressional vacancy elections, see § 1-2-210; for the power of the county central committee to fill vacancies, see § 1-3-104; for filling vacancies to serve as judges of elections, see § 1-6-113.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131. **C.J.S.** See 29 C.J.S., Elections, §§ 3, 134.

1-4-402. Nominations of political party candidates. (1) (a) Any convention of delegates of a political party or any committee authorized by resolution of the convention shall nominate a candidate to fill a vacancy in the unexpired term of a representative in congress. A state central committee, its managing or executive committee selected pursuant to section 1-3-105 (2), or any other committee designated by the bylaws of the state central committee to convene a convention to nominate a candidate to fill a vacancy in the unexpired term of a representative in congress shall convene the convention and shall provide the procedure for the nomination of the candidate. A copy of the notice of election, as set by the governor and filed with the secretary of state, shall be sent by certified mail to the state chairperson of each political party.

(b) Upon receipt of the notice, the state chairperson shall issue a call for the state convention, stating the number of delegates from each county and the method of their selection.

(c) No convention shall be held later than the twentieth day from the date of the order issued by the governor.

(d) (I) Any candidate nominated by a political party shall have been affiliated with the party for at least twelve consecutive months prior to the date the convention begins, as shown on the voter registration book of the county clerk and recorder.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), if a political party has established a rule regarding the length of affiliation which is necessary to be eligible for nomination by convention for the office of representative in congress, the party rule shall apply.

(2) The nomination to fill the vacancy in the unexpired term of a representative in congress made by the political party convention or a committee authorized by the convention shall be certified by affidavit of the presiding officer and secretary of the convention or committee.

Source: **L. 80:** Entire article R&RE, p. 325, § 1, effective January 1, 1981. **L. 83:** Entire section amended, p. 362, § 1, effective January 14; (1) amended, p. 351, § 11, effective July 1. **L. 88:** (1)(d) amended, p. 293, § 2, effective May 29. **L. 92:** Entire part amended, p. 676, § 4, effective January 1, 1993. **L. 99:** (1)(d)(II) amended, p. 160, § 8, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For methods of nomination, see §§ 1-4-502 and 1-4-503; for protests of designations and nominations, see § 1-4-909.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 214, 215. **C.J.S.** See 29 C.J.S., Elections, § 178.

1-4-403. Nomination of unaffiliated candidates for congressional vacancy election. (1) Candidates for congress at a congressional vacancy election who do not wish to affiliate with a major political party may be nominated pursuant to the provisions of section 1-4-802.

(2) Petitions must be filed by 3 p.m. on the thirtieth day after the date of the order issued by the governor.

Source: **L. 80:** Entire article R&RE, p. 325, § 1, effective January 1, 1981. **L. 83:** Entire section R&RE, p. 351, § 12, effective July 1. **L. 92:** Entire part amended, p. 677, § 4, effective January 1, 1993. **L. 99:** Entire section amended, p. 762, § 19, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-107 (5) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. The following annotations are taken from a case decided under former provisions similar to this section.

The provision for acceptance of a nomination is so plain that it needs no construction other than that which its own language imports. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

All nominees of minor political parties are required to file an acceptance. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

And if they do not file an acceptance within the specified time, their failure to do so is equivalent to an express declination. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

And such nomination will be treated as vacant. *O'Connor v. Smithers*, 45 Colo. 23, 99 P.46 (1908).

The certificate of nomination has no force or effect if not filed within the time required by law. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

Although nominee has already accepted a nomination for the same office upon another ticket, the secretary of state is justified in refusing to certify it for a place on the ballot where nominee fails to file his acceptance. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

Without an express written acceptance there is just as much a vacancy as if a nominee by convention should expressly decline to accept. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

1-4-404. Nomination and acceptance of candidate. Any person nominated in accordance with this article shall file a written acceptance with the secretary of state by mail or hand delivery. The written acceptance must be postmarked or received by the secretary of state within ten business days after the adjournment of the assembly. If an acceptance is not filed within the specified time, the candidate shall be deemed to have declined the nomination, and the nomination shall be treated as a vacancy to be filled as provided in section 1-4-1002 (3) and (5).

Source: L. 83: Entire section added, p. 351, § 13, effective July 1. L. 92: Entire part amended, p. 677, § 4, effective January 1, 1993. L. 95: Entire section amended, p. 829, § 26, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for acceptance of a nomination is so plain that it needs no construction other than that which its own language imports. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

All nominees of minor political parties are required to file an acceptance. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

And if they do not file an acceptance within the specified time, their failure to do so is equivalent to an express declination. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

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PART 5

QUALIFICATIONS AND METHODS OF NOMINATION

Editor's note: This part 5 was numbered as 49-3-5, 49-6-1, and 49-5-12 in C.R.S. 1963. The substantive provisions of this part 5 were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as part of the repeal and reenactments are shown in editor's notes following each section.

1-4-501. Only eligible electors eligible for office. (1) No person except an eligible elector who is at least eighteen years of age, unless another age is required by law, is eligible to hold any office in this state. No person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the term of that office begins. The designated election official shall not certify the name of any designee or candidate who fails to swear or affirm under oath that he or she will fully meet the qualifications of the office if elected and who is unable to provide proof that he or she meets any requirements of the office relating to registration, residence, or property ownership. The information found on the person's voter registration record is admissible as prima facie evidence of compliance with this section.

(2) No person is eligible to be a candidate for more than one office at one time; except that this subsection (2) does not apply to memberships on different special district boards. This subsection (2) shall not prohibit a candidate or elected official of any political subdivision from being a candidate or member of the board of directors of any special district or districts in which he or she is an eligible elector, unless otherwise prohibited by law.

(3) The qualification of any candidate may be challenged by an eligible elector of the political subdivision within five days after the designated election official's statement is issued that certifies the candidate to the ballot. The challenge shall be made by verified petition setting forth the facts alleged concerning the qualification of the candidate and shall be filed in the district court in the county in which the political subdivision is located. The hearing on the qualification of the candidate shall be held in not less than five nor more than ten days after the date the election official's statement is issued that certifies the candidate to the ballot. The court shall hear the testimony and other evidence and, within forty-eight hours after the close of the hearing, determine whether the candidate meets the qualifications for the office for which the candidate has declared. Provisions of section 13-17-101, C.R.S., regarding frivolous, groundless, or vexatious actions shall apply to this section.

Source: **L. 92:** Entire part R&RE, p. 677, § 5, effective January 1, 1993. **L. 94:** (2) amended, p. 1153, § 12, effective July 1. **L. 95:** Entire section amended, p. 829, § 27, effective July 1.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-501 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For electors only eligible to office, see also § 6 of art. VII, Colo. Const.; for disqualifications from holding office of trust or profit, see § 4 of art. XII, Colo. Const.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 251.

C.J.S. See 29 C.J.S., Elections, § 236.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One obtaining office illegally, guilty only of misdemeanor, not disqualified. People ex rel. Thomas v.

Goddard, 8 Colo. 432, 7 P. 301 (1885).

Section does not conflict with § 4 of art. V, Colo. Const. Romero v. Sandoval, 685 P.2d 772 (Colo. 1984).

Compliance with residency requirement can be proven by means other than the voter registration page. Romero v. Sandoval, 685 P.2d 772 (Colo. 1984).

1-4-502. Methods of nomination for partisan candidates. (1) Except as otherwise provided in paragraphs (b) and (c) of subsection (3) of this section, nominations for United States senator, representative in congress, governor, lieutenant governor, secretary of state, state treasurer, attorney general, member of the state board of education, regent of the university of Colorado, member of the general assembly, district attorney, and all county officers to be elected at the general election may be made by primary election by major political parties, by petition for nomination as provided in section 1-4-802, or by a minor political party as provided in section 1-4-1304.

(2) Nominations for presidential electors to be elected at the general election and for candidates to fill vacancies to unexpired terms of representatives in congress to be elected at a congressional vacancy election may be made by a convention of a political party, or by a committee authorized by the convention, or by petition for nomination of an unaffiliated candidate as provided in parts 8 and 9 of this article.

(3) For general elections occurring after January 1, 2001:

(a) The nomination of a major political party for lieutenant governor shall be made by the party's candidate for governor. No later than seven days following the primary election, the party's candidate for governor shall select a candidate for lieutenant governor. Other nominations for the office of lieutenant governor may be made by petition for nomination of an unaffiliated candidate as provided in section 1-4-802 or by a minor political party as provided in section 1-4-1304 (2).

(b) No person shall be eligible for a major political party nomination for lieutenant governor unless such person is a registered elector and has been affiliated, for a period of at least twelve months

immediately preceding the date of the nomination, with the major political party making the nomination as shown in the record books of the county clerk and recorder.

(c) Any person nominated as the candidate for lieutenant governor of a major political party pursuant to paragraph (a) of this subsection (3) shall file a written acceptance with the secretary of state by mail or hand delivery. The written acceptance must be postmarked or received by the secretary of state within thirty days after the primary election. If an acceptance is not filed within the required time, the candidate shall be deemed to have declined the nomination, and the nomination shall be treated as a vacancy to be filled as provided in section 1-4-1002 (2.3) (a).

Source: **L. 92:** Entire part R&RE, p. 677, § 5, effective January 1, 1993. **L. 95:** Entire section amended, p. 860, § 115, effective July 1. **L. 98:** (1) amended, p. 256, § 6, effective April 13. **L. 2000:** (1) amended and (3) added, p. 2027, § 2, effective August 2. **L. 2003:** (1) amended, p. 1309, § 6, effective April 22.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-502 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For party nominations by convention, see § 1-4-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 221-225.

1-4-503. Method of nomination for nonpartisan candidates. Except as provided for the nomination of special district directors in section 32-1-804.3, C.R.S., nominations for all elected nonpartisan local government officials shall be by petition for nomination as provided in part 8 of this article.

Source: **L. 92:** Entire part R&RE, p. 678, § 5, effective January 1, 1993. **L. 99:** Entire section amended, p. 450, § 4, effective August 4.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-502 and 1-4-801 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-201 and 1-14-301 as said sections existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For filing of petitions and certificates of designation of assembly, see § 1-4-604.

1-4-504. Documents are public records. All certificates of designation, petitions, certificates of nomination, acceptances, declinations, and withdrawals are public records as soon as they are filed and are open to public inspection under proper regulation. When a copy of any document is presented at the time the original is filed or at any time thereafter and a request is made to have a copy compared and certified, the officer with whom the document is filed shall forthwith compare the copy with the original on file and, if necessary, correct the copy and certify and deliver the copy to the person who presented it upon the payment in advance of the copy and certification charge. All filed documents shall be preserved pursuant to section 1-7-802, unless otherwise ordered or restrained by some court.

Source: L. 92: Entire part R&RE, p. 678, § 5, effective January 1, 1993.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-4-503 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For statutes pertaining to public records generally, see article 72 of title 24; for filing of petitions and certificates of designation of assembly, see § 1-4-604.

PART 6

POLITICAL PARTY DESIGNATION FOR PRIMARY ELECTION

1-4-601. Designation of candidates for primary election. (1) Assemblies of the major political parties may make assembly designations of candidates for nomination on the primary election ballot. An assembly shall be held no later than seventy days preceding the primary election.

(2) An assembly shall take no more than two ballots for party candidates for each office to be filled at the next general election. Every candidate receiving thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office shall be certified by affidavit of the presiding officer and secretary of the assembly. If no candidate receives thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting, a second ballot shall be cast on all the candidates for that office. If on the second ballot no candidate receives thirty percent or more of the votes cast, the two candidates receiving the highest number of votes shall be certified as candidates for that office by the assembly. The certificate of designation by assembly shall state the name of the office for which each person is a candidate and the candidate's name and address, shall designate in not more than three words the name of the political party which the candidate represents, and shall certify that the candidate has been a member of the political party for the period of time required by party rule or by law if the party has no such rule. The candidate's affiliation, as shown on the registration books of the county clerk and recorder, is prima facie evidence of political party membership. The certificate of designation shall indicate the order of the vote received at the assembly by candidates for each office, but no assembly shall declare that any one candidate has received the nomination of the assembly. The certificate of designation shall be filed in accordance with section 1-4-604. If two or more candidates receiving designation under the provisions of this subsection (2) have received an equal number of votes, the order of certification of designation shall be determined by lot by the candidates. The assembly shall select a vacancy committee for vacancies in designation or nomination only.

(3) (a) Except as provided in paragraph (b) of this subsection (3), no later than four days after the adjournment of the assembly, each candidate designated by assembly shall file a written acceptance with the officer with whom the certificate of designation is filed. This acceptance may be transmitted by facsimile transmission. If the acceptance is transmitted by facsimile transmission, the original acceptance must also be filed and postmarked no later than ten days after the adjournment of the

assembly. The acceptance shall state the candidate's name in the form in which it is to appear on the ballot. The name may include one nickname. If an acceptance is not filed within the specified time, the candidate shall be deemed to have declined the designation; except that the candidate shall not be deemed to have declined the designation and shall be included on the primary ballot if late filing of an acceptance is caused by the failure to timely file a certificate of designation or the failure to file such acceptance with such certificate of designation, as required by section 1-4-604 (1) (a).

(b) The written acceptance of a candidate nominated by assembly for any national or state office or for member of the general assembly, district attorney, or district office greater than a county office shall be filed by the presiding officer or secretary of such assembly with the certificate of designation of such assembly, as required by section 1-4-604 (1) (a). Nothing in this paragraph (b) shall prohibit a candidate from filing an acceptance of nomination directly with the officer with whom the certificate of designation is filed following written notice of such filing by the candidate to the presiding officer of the political party holding such assembly.

(4) (a) No person is eligible for designation by assembly as a candidate for nomination at any primary election unless the person has been affiliated with the political party holding the assembly for a period of at least twelve months immediately preceding the date of the assembly, as shown by the registration books of the county clerk and recorder, unless otherwise provided by party rules.

(b) Repealed.

(5) As used in this section, "political party" means a major political party as defined in section 1-1-104 (22).

Source: **L. 80:** Entire article R&RE, p. 326, § 1, effective January 1, 1981. **L. 81:** (1) and (3) amended, p. 310, § 1, effective March 27. **L. 83:** (2) amended, p. 352, § 16, effective July 1. **L. 87:** (2) amended, p. 286, § 8, effective June 26. **L. 88:** (4) amended, p. 294, § 3, effective May 29. **L. 89:** (4)(b) repealed, p. 314, § 3, effective April 12; (1) and (2) amended, p. 302, § 7, effective May 9. **L. 92:** Entire part amended, p. 678, § 6, effective January 1, 1993. **L. 94:** (4)(a) amended, p. 1153, § 13, effective July 1. **L. 98:** (5) added, p. 257, § 7, effective April 13. **L. 99:** (3) amended, p. 285, § 1, effective April 13; (1) and (3) amended, p. 762, § 20, effective May 20; (2) amended, p. 160, § 9, effective August 4. **L. 2005:** (1) amended, p. 1398, § 14, effective June 6; (1) amended, p. 1433, § 14, effective June 6.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-204 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to subsection (3) by Senate Bill 99-025 and House Bill 99-1225 were harmonized.

Cross references: For the definition of assembly, see § 1-1-104 (1.3); for designation of candidates by petition, see § 1-4-603.

ANNOTATION

- I. General Consideration.
- II. Certification of Candidate's Designation.
- III. Twelve-Month Affiliation Requirement.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 234-236.

C.J.S. See 29 C.J.S., Elections, §§ 205, 206.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982).

II. CERTIFICATION OF CANDIDATE'S DESIGNATION.

It is the duty of the presiding officer and the secretary of the assembly to certify the candidate's designation. *Murphey v. Trott*, 160 Colo. 336, 417 P.2d 234 (1966).

They must also certify that the candidate has been registered with the political party for the required time. *Murphey v. Trott*, 160 Colo. 336, 417 P.2d 234 (1966).

III. TWELVE-MONTH AFFILIATION REQUIREMENT.

In order to have been an eligible candidate for designation a person must have been "affiliated with" that particular political party for the 12 months immediately preceding the date of the assembly. *Murphey v. Trott*, 160 Colo. 336, 417 P.2d 234 (1966).

And in order to have been affiliated with a

political party for the 12 months immediately preceding the assembly of that party, the petitioner for a party candidacy must have filed in the new county to which he had moved the certificate proving his prior affiliation at the time he registered in the new county. *Murphey v. Trott*, 160 Colo. 336, 417 P.2d 234 (1966).

Affiliation provisions mandatory. Unless a person comes under the affiliation provisions, he may not be designated as a party candidate even though he may have been mistakenly designated by a county assembly as a primary nominee and even though he may have been selected by the voters at the primary election to be the party candidate. *Ray v. Mickelson*, 196 Colo. 325, 584 P.2d 1215 (1978).

1-4-602. Delegates to party assemblies. (1) (a) (I) County assemblies shall be held not less than ten days nor more than thirty days after precinct caucuses held on the third Tuesday in March. If a political party holds its precinct caucuses on the first Tuesday in February in a year in which a presidential election will be held, the county assemblies of the political party shall be held not less than fifteen days nor more than forty days after the precinct caucuses. The county central committee or executive committee shall fix the number of delegates from each precinct to participate in the county assembly pursuant to the procedure for the selection of delegates contained in the state party central committee's bylaws or rules. The persons receiving the highest number of votes at the precinct caucus shall be the delegates to the county assembly from the precinct. If two or more candidates receive an equal number of votes for the last available place in the election of delegates to county assemblies at the precinct caucuses, the delegate shall be determined by lot by the candidates. Except as provided in subsections (2) and (6) of this section, delegates to all other party assemblies shall be selected by the respective county assemblies from among the members of the county assemblies pursuant to the state party central committee's bylaws or rules.

(II) Repealed.

(b) In determining the number of delegates from precincts which have been created or split since the previous general election, the county central committee or executive committee may allocate delegates based on the number of registered voters affiliated with the political party, pursuant to the state party central committee's bylaws or rules.

(2) (a) In each state senatorial and representative district comprised of a portion of one county only, persons elected at precinct caucuses as delegates to the county assemblies shall serve also as delegates to the senatorial and representative district assemblies.

(b) In each state senatorial and representative district comprised of one or more whole counties and a portion of one or more counties or comprised of portions of two or more counties, the number of delegates to the senatorial and representative district assemblies shall be apportioned among the counties by the party's senatorial or representative central committee according to the vote in the county or portion of a county for that party's candidate for governor or president in the last general election, pursuant to the state party central committee's bylaws or rules.

Also the provisions for designation of candidates by assembly by petition require registration of a person on the books of the county clerk and recorder as a member of a particular political party as a condition of eligibility for designation as a candidate of that party for public office. *Anderson v. Kilmer*, 134 Colo. 270, 302 P.2d 185 (1956).

And candidate not eligible if he does not meet this requirement. Under the provisions for designation of candidates by assembly and by petition, a person who has not been registered as a member of the political party under which he seeks designation for public office, for a period of one year prior to the date of the party assembly, is not eligible for designation as a candidate. *Anderson v. Kilmer*, 134 Colo. 270, 302 P.2d 185 (1956).

It is clear that the clerk's record must itself indicate the affiliation of the person with the political party for at least one year prior to the date of the assembly. *Spain v. Fischahs*, 143 Colo. 464, 354 P.2d 502 (1960).

Also, the record of the clerk and recorder cannot be supplemented or enlarged in any way by parol evidence. *Spain v. Fischahs*, 143 Colo. 464, 354 P.2d 502 (1960).

(3) All questions regarding the qualifications of any delegate or the conduct of any precinct caucus at which the delegates were voted on shall be determined by the credentials committees of the respective party county, representative, and senatorial assemblies.

(4) (a) All places established for holding precinct caucuses shall be designated by a sign conspicuously posted no later than twelve days before the precinct caucuses. The sign shall be substantially in the following form: "Precinct caucus place for precinct no." The lettering on the sign and the precinct number shall be black on a white background with all letters and numerals at least four inches in height. Any precinct caucus subsequently removed and held in a place other than the place stated on the sign is null and void.

(b) Repealed.

(5) As used in this section, "delegate" means a person who is a registered elector, has been a resident of the precinct for thirty days prior to the caucus, and has been affiliated with the political party holding the caucus for at least two months, as shown on the registration books of the county clerk and recorder; except that any registered elector who has attained the age of eighteen years during the two months immediately preceding the caucus or any registered elector who has become a naturalized citizen during the two months immediately preceding the caucus may be a delegate even though the elector has been affiliated with the political party for less than two months as shown on the registration books of the county clerk and recorder. A delegate who moves from the precinct where registered during the twenty-nine days prior to any caucus shall become ineligible to serve as a delegate from that precinct.

(6) In each state senatorial and representative district comprised of all or parts of more than one county, persons elected at precinct caucuses as delegates to the county assemblies from precincts within the senatorial or representative district shall also serve as delegates to the senatorial and representative district assemblies if the senatorial or representative district central committee, by resolution adopted prior to the holding of the precinct caucuses in the year for which the resolution is to be effective, chooses to have the delegates to its district assembly in that year elected as provided in this subsection (6); except that selection of delegates under this subsection (6) shall be in conformance with the procedure established in the state party central committee's bylaws or rules. As a part of the resolution, the senatorial or representative central committee may determine the total number of delegate votes to be cast at the senatorial or representative district assembly, apportion them by county among the portions of the district which lie in separate counties upon an equitable basis determined by party bylaws or rules, and, upon the basis of the apportionment, determine the factor necessary to apportion equally among the delegates from the precincts within the district in each county the total votes to be cast by delegates from the portion of the district lying within that county.

Source: **L. 80:** Entire article R&RE, p. 326, § 1, effective January 1, 1981. **L. 82:** (5) amended, p. 217, § 2, effective February 19. **L. 85:** (1) amended, p. 256, § 8, effective May 31; (1) amended, p. 248, § 5, effective July 1. **L. 91:** (5) amended, p. 620, § 34, effective May 1. **L. 92:** Entire part amended, p. 679, § 6, effective January 1, 1993. **L. 94:** (5) amended, p. 1768, § 24, effective January 1, 1995. **L. 95:** (5) amended, p. 830, § 28, effective July 1. **L. 96:** (1), (2)(b), and (6) amended, p. 1738, § 20, effective July 1. **L. 98:** (1) amended, p. 633, § 5, effective May 6. **L. 99:** (1)(a), (4), and (5) amended, p. 763, § 21, effective May 20; (1)(a) amended, p. 100, § 2, effective August 4. **L. 2002:** (1)(a) and (4) amended, p. 133, § 4, effective March 27. **L. 2005:** (1)(a)(I) amended, p. 1398, § 15, effective June 6; (1)(a)(I) amended, p. 1433, § 15, effective June 6. **L. 2007:** (1)(a)(I) amended, p. 1989, § 4, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-205 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to subsection (1) by Senate Bill 85-86 and House Bill 85-1063 were harmonized.

(3) Amendments to subsection (1)(a) by Senate Bill 99-025 and Senate Bill 99-027 were harmonized.

(4) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective July 1, 2002. (See L. 2002, p. 133.)

(5) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective July 1, 2002. (See L. 2002, p. 133.)

(6) Subsection (1)(a)(I) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 198.

Applied in *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982).

1-4-603. Designation of major political party candidates by petition. Candidates for major political party nominations for the offices specified in section 1-4-502 (1) that are to be made by primary election may be placed on the primary election ballot by petition, as provided in part 8 of this article.

Source: L. 80: Entire article R&RE, p. 328, § 1, effective January 1, 1981. **L. 83:** (3), (6), and (8) amended, p. 353, § 17, effective July 1. **L. 85:** (2)(a), (2)(b), (3), (4), and (8) amended and (2)(d) added, p. 257, § 9, effective May 31. **L. 88:** (2)(a) and (2)(b) amended, p. 297, § 2, effective January 1, 1989. **L. 89:** (3) amended and (5.5) and (9) added, p. 302, § 8, effective May 9. **L. 91:** (2) amended, p. 621, § 35, effective May 1. **L. 92:** Entire part amended, p. 681, § 6, effective January 1, 1993. **L. 98:** Entire section amended, p. 257, § 8, effective April 13. **L. 2000:** Entire section amended, p. 2028, § 3, effective August 2.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

- I. General Consideration.
- II. Electors Signing Petition.
- III. Oath and Affidavit.
- IV. Affiliation Required.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 241-245.

C.J.S. See 29 C.J.S., Elections, §§ 195-199.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

In addition to nominees designated by party assembly, a party member desirous of the party's nomination at the primary election may become a candidate by filing a petition signed by the requisite number of the electors of his party residing within the district from which he seeks to be elected. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

And it is permissible and possible for several candidates for the party's nomination to be placed on the primary ballot by this procedure. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

The purpose in allowing nominations by individuals is to confer upon electors the right to place candidates in nomination under some party name which they might choose, representing a principle which they desired to support at the polls. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

II. ELECTORS SIGNING PETITION.

Certificates not having the requisite number of names have no effect to nominate candidates, and can only be made valid by the addition of names within the time required by law to make nominations by individuals. *Whipple v. Kleckner*, 25 Colo. 423, 55 P. 163 (1898); *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

All duplicate names on certificates for the same candidates for the same office must be eliminated. The certificates nominating candidates for the legislative and senatorial districts did not contain the requisite number of names to make a nomination by individuals, for the obvious reason that all duplicate names on these certificates for the same candidates for the same office must be eliminated. Hence, they were invalid. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

III. OATH AND AFFIDAVIT.

Voter must not only sign petition but must also sign the oath, and a failure so to do invalidates the certificate. *Cowie v. Means*, 39 Colo. 1, 88 P. 485 (1906).

The signature of the elector, statement of residence, and the oath that the subscriber is an elector are matters of substance. *Cowie v. Means*, 39 Colo. 1, 88 P. 485 (1906).

Each requirement is to be a check upon the making of false or fraudulent certificates, and to enable anyone inspecting a certificate to discover the residence of the subscriber. *Cowie v. Means*, 39 Colo. 1, 88 P. 485 (1906).

The oath required is a matter of substance, as affording prima facie proof that the persons so subscribing the certificate did, in fact, subscribe the certificate, and are, in fact, electors of the state. *Cowie v. Means*, 39 Colo. 1, 88 P. 485 (1906).

These requirements are essential. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

Where no affidavit is made, the alleged certificate of nomination is void and of no force or effect, and no duty rested upon defendant as town clerk to file same or place the names of the candidates mentioned therein upon the ballot. Ballew v. Hartman, 118 Colo. 476, 196 P.2d 870 (1948).

Petitions for nomination of candidates held insufficient, where the affidavit attached to each, although sworn to, was not signed by the signers of the petition. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906); Stephen v. Lail, 80 Colo. 49, 248 P. 1012 (1926).

Where the original petition is void because the oath was not signed by the voters, that portion of it assuming to appoint a committee to fill vacancies is likewise void, and such alleged committee has no power to act. Cowie v. Means, 39 Colo. 1, 88 P. 485 (1906).

IV. AFFILIATION REQUIRED.

The provisions for designation of candidates by petition and by party assembly require that a person shall be affiliated for one year with the party in which he seeks to become a candidate for public office. Anderson v. Kilmer, 134 Colo. 270, 302 P.2d 185 (1956).

And the county clerk's record must indicate the affiliation of that person with the political party for at least one year prior to the date of the assembly at which he seeks designation as a candidate for office. Spain v. Fischahs, 143 Colo. 464, 354 P.2d 502 (1960).

The record of the county clerk cannot be supplemented or enlarged by parol evidence. Spain v. Fischahs, 143 Colo. 464, 354 P.2d 502 (1960).

1-4-604. Filing of petitions and certificates of designation by assembly - legislative declaration. (1) (a) Every petition or certificate of designation by assembly in the case of a candidate for nomination for any national or state office specified in section 1-4-502 (1), or for member of the general assembly, district attorney, or district office greater than a county office, together with the written acceptances signed by the persons designated or nominated by such assembly described in section 1-4-601 (3), shall be filed by the presiding officer or secretary of such assembly and received in the office of the secretary of state.

(b) A copy of each such certificate of designation shall be transmitted by the presiding officer or secretary of each assembly to the state central committee of the political party holding such assembly within three days after the adjournment of such assembly.

(2) Every petition or certificate of designation by assembly in the case of a candidate for nomination for any elective office other than the offices specified in paragraph (a) of subsection (1) of this section shall be filed in the office of the county clerk and recorder of the county where the person is a candidate.

(3) Certificates of designation by assembly shall be filed no later than four days after the adjournment of the assembly. Certificates of designation may be transmitted by facsimile transmission; however, the original certificate must also be filed and postmarked no later than ten days after the adjournment of the assembly.

(4) (Deleted by amendment, L. 99, p. 764, § 22, effective May 20, 1999.)

(5) Late filing of the certificate of designation shall not deprive candidates of their candidacy.

(6) (a) No later than four days after the adjournment of the assembly, the state central committee of each political party, utilizing the information described in paragraph (b) of subsection (1) of this section, shall file with the secretary of state a compilation of the certificates of designation of each assembly that nominated candidates for any national or state office or for member of the general assembly, district attorney, or district office greater than a county office. Such a compilation of certificates of designation may be transmitted by facsimile transmission; however, the original compilation must also be filed and postmarked no later than ten days after the adjournment of the assembly.

(b) The secretary of state shall compare such party compilation of certificates of designation with the certificates of designation filed by each such assembly with the secretary of state's office pursuant to paragraph (a) of subsection (1) of this section. In the event that a certificate of designation appearing on such party compilation has not been filed pursuant to paragraph (a) of subsection (1) of this

section, the secretary of state shall notify the state central committee of such party not less than fifty-seven days before the primary election of an assembly's failure to file such certificate of designation.

(c) A state central committee that receives notification pursuant to paragraph (b) of this subsection (6) shall file, or direct the presiding officer of the assembly to file, the certificate of designation, together with any written acceptances, not less than fifty-six days before the primary election.

(d) The general assembly hereby finds and declares that it is beneficial to improve the procedure and timeliness for communicating the designation of candidates for the primary election ballot by political party assemblies between the officers of such assemblies, the state central committee of each political party, and the secretary of state. The general assembly further finds that prescribing certain additional review processes for the documentation evidencing designations and nominations of candidates that are not onerous will serve to minimize the likelihood of a candidate being deprived of his or her candidacy and of an erroneous primary election ballot. The general assembly further encourages the responsible officials to engage in the enhanced communication and review described in this subsection (6) well in advance of statutorily prescribed deadlines or ballot certification dates, if possible, in order to maximize the time for giving notice and resolving any issues that may arise from the primary ballot nomination process.

Source: L. 80: Entire article R&RE, p. 329, § 1, effective January 1, 1981. L. 81: Entire section amended, p. 310, § 2, effective March 27. L. 87: Entire section amended, p. 287, § 9, effective June 26. L. 89: Entire section amended, p. 303, § 9, effective May 9. L. 92: Entire part amended, p. 682, § 6, effective January 1, 1993. L. 99: Entire section amended, p. 286, § 2, effective April 13; entire section amended, p. 764, § 22, effective May 20. L. 2000: (1)(a) amended, p. 2028, § 4, effective August 2.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-208 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) (a) Amendments to this section by Senate Bill 99-025 and House Bill 99-1225 were harmonized.

(b) An amendment to this section by Senate Bill 99-025 struck the language contained in subsection (4) as amended by House Bill 99-1225.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 291-297.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Although boundaries of judicial district are coincident with those of county, certificate should be filed with secretary of state. Under the provision that a certificate of nomination for an office to be filled by the voters of a district office greater than a county office shall be filed with the secretary of state, a certificate of nomination for the office of district attorney of a judicial district should be filed with the secretary of state,

notwithstanding the boundaries of the district were coincident with those of the county. *Brown v. Van Cise*, 69 Colo. 242, 193 P. 495 (1920).

Clerk who wrongfully refuses to accept certificate may be commanded to file certificate as of

the date of presentment. The county clerk had wrongfully refused to accept a certificate making nominations for an approaching election. In view of the brief time intervening between the hearing and the day appointed for the election, the court, to avoid the delays which must attend a remand of the cause, gave judgment commanding the county clerk to file the certificate as of the date upon which it was presented, and proceed in the matter as required by law. *McBroom v. Brown*, 53 Colo. 412, 127 P. 957 (1912).

Petitioner's name allowed to appear on ballot. Where the secretary of state accepted and approved the petition filed by petitioner, and no objections were filed as to the validity of his petition, there was no issue in reference to his right to appear on the primary ballot as a candidate by petition and his name did appear. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-605. Order of names on primary ballot. Candidates designated and certified by assembly for a particular office shall be placed on the primary election ballot in the order of the vote received at the assembly. The candidate receiving the highest vote shall be placed first in order on the ballot, followed by the candidate receiving the next highest vote, and so on until all of the candidates designated have been placed on the ballot. The names of two or more candidates receiving an equal number of votes for designation by assembly shall be placed on the primary ballot in the order determined by lot in accordance with section 1-4-601 (2). Candidates by petition for any particular office shall follow assembly candidates and shall be placed on the primary election ballot in an order established by lot.

Source: L. 80: Entire article R&RE, p. 329, § 1, effective January 1, 1981. **L. 85:** Entire section amended, p. 258, § 10, effective May 31. **L. 92:** Entire part amended, p. 683, § 6, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-209 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 25 C.J.S., Elections, § 205.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Petitioner's name allowed to appear on ballot.

Where the secretary of state accepted and approved the petition filed by petitioner and no objections were filed as to the validity of his petition, there was no issue in reference to his right to appear on the primary ballot as a

candidate by petition and his name did appear. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

The fact that several candidates have been designated by the party assembly does not preclude a petition candidate from having his petition accepted by the secretary of state (or county clerk, as the case may be) and his name listed as a candidate for his party's nomination on the primary ballot. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

PART 7

CONVENTIONS - POLITICAL PARTY NOMINATIONS

1-4-701. Party nominations to be made by convention. (1) Any convention of delegates of a political party or any committee authorized by resolution of the convention may nominate candidates for vacancies to unexpired terms of representatives in congress and for presidential electors and also may select delegates to national political conventions.

(2) (a) The certificate of nomination shall contain the name of the office for which each person is nominated and the person's name and address and shall designate, in not more than three words, the political party which the convention or committee represents.

(b) No certificate of nomination shall contain the names of more candidates for any office than there are offices to fill. If any certificate does contain the names of more candidates than there are offices to fill, only those names which come first in order on the certificate and are equally numbered with the number of offices to be filled shall be taken as nominated. No person shall sign more than one certificate of nomination for any office.

(c) When the nomination is made by a committee, the certificate of nomination shall also contain a copy of the resolution passed at the convention which authorized the committee to make the nomination.

(d) In the case of presidential electors, the names of the candidates for president and vice president may be added to the name of the political party in the certificate of nomination.

(3) Certificates of nomination shall be received and filed with the secretary of state no later than sixty days before the general or congressional vacancy election.

(4) Any person nominated in accordance with this section by either of the two major political parties shall be deemed to have accepted the nomination unless the candidate files with the secretary of state a written declination of the nomination no later than four days after the adjournment of the convention. The declination may be transmitted by facsimile transmission no later than four days after the adjournment of the convention. If the declination is transmitted by facsimile transmission, the original declination must also be filed and postmarked no later than ten days after the adjournment of the convention.

Source: L. 80: Entire article R&RE, p. 329, § 1, effective January 1, 1981. L. 85: (3) amended, p. 248, § 6, effective July 1. L. 88: (4) amended, p. 1429, § 1, effective June 11. L. 92: Entire part amended, p. 683, § 6, effective January 1, 1993. L. 99: (3) and (4) amended, p. 764, § 23, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-107 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For methods of nomination, see §§ 1-4-502 and 1-4-503; for objections to nominations, see § 1-4-909.

ANNOTATION

- I. General Consideration.
- II. More Candidates Than Offices to Fill.
- III. Filing Certificates with Secretary of State.
- IV. Miscellaneous.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 225.

C.J.S. See 29 C.J.S., Elections, § 178.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for acceptance of a nomination is so plain that it needs no construction other than that which its own language imports. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

No convention or body of men can compel another to be a candidate for office against his will. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

Only the political parties have the right to nominate by a convention or nominating committee. *Schafer v. Whipple*, 25 Colo. 400, 55 P. 180 (1898).

Nominees by either of the two leading political parties are not required to file an acceptance. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

II. MORE CANDIDATES THAN OFFICES TO FILL.

The purpose of limiting the number of names on a certificate of nomination to the number of offices to be filled is to prevent the same persons nominating candidates for the same office by certificate as individuals under two or more party names. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

An elector once having exercised the right to join in a certificate as an individual, nominating a candidate for office under some name adopted by the

signers, cannot join in nominating the same person for the same office under some other name. *O'Connor v. Smithers*, 45 Colo. 23, 99 P. 46 (1908).

III. FILING CERTIFICATE WITH SECRETARY OF STATE.

Certificates of nomination must be presented for filing at the office of the secretary of state to some person in charge thereof during business hours. *Cowie v. Means*, 39 Colo. 1, 88 P. 485 (1906).

Certificates not filed in office of the secretary of state. Certain alleged certificates of nomination to fill vacancies were handed for filing to the secretary of state, on board a train bound for another city, at the union depot in Denver, preceding the general election to be held on November 6. It was held, that such action did not constitute a legal filing of such certificates, as of that date, it being necessary to tender such certificates for filing at the office of the secretary of state to some person in charge during business hours. *Cowie v. Means*, 39 Colo. 1, 88 P. 485 (1906).

IV. MISCELLANEOUS.

The convention revoked nomination power of the committee. A party convention sat two days, and on the first day it adopted a resolution empowering a committee to nominate the ticket which it had assembled; on the second day, without expressly rescinding the resolution, it proceeded to nominate a full ticket and then adjourned sine die. It was held that the action of the convention on the second day was a revocation of the power delegated to the committee. *Leighton v. Bates*, 24 Colo. 303, 50 P. 856 (1897).

Secretary of state has no power to decide between two sets of nominations. When two sets of nominations, both by conventions purporting to have been held by the same political party, and each in apparent

conformity with this section, are certified to the secretary of state, he has no power to decide between them, but should certify both tickets to the county clerks in order that both

may be printed upon the official ballots. People ex rel. Eaton v. Dist. Court, 18 Colo. 26, 31 P. 339 (1892).

PART 8

NOMINATION OF CANDIDATES BY PETITION

Editor's note: This part 8 was originally enacted as 49-7-1 and 49-6-7 in C.R.S. 1963. The substantive provisions of this part 8 were repealed and reenacted in 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963. For additional information relating to the repeal and reenactment of this article in 1980, see the editor's note immediately following the article heading.

1-4-801. Designation of party candidates by petition. (1) Candidates for political party nominations to be made by primary election may be placed on the primary election ballot by petition. Every petition to nominate candidates for a primary election shall state the name of the office for which the person is a candidate and the candidate's name and address and shall designate in not more than three words the name of the political party which the candidate represents. No petition shall contain the name of more than one person for the same office.

(2) The signature requirements for the petition are as follows:

(a) Every petition in the case of a candidate for any county office shall be signed by electors eligible to vote within the county commissioner district or political subdivision for which the officer is to be elected. The petition shall require signers equal in number to twenty percent of the votes cast in the political subdivision at the contested or uncontested primary election for the political party's candidate for the office for which the petition is being circulated or, if there was no primary election, at the last preceding general election for which there was a candidate for the office.

(b) Every petition in the case of a candidate for member of the general assembly, district attorney, or any district office greater than a county office shall be signed by eligible electors resident within the district for which the officer is to be elected. The petition shall require the lesser of one thousand signers or signers equal to thirty percent of the votes cast in the district at the contested or uncontested primary election for the political party's candidate for the office for which the petition is being circulated or, if there was no primary election, at the last preceding general election for which there was a candidate for the office.

(c) (I) Repealed.

(II) On and after January 1, 1999, every petition in the case of a candidate for an office to be filled by vote of the electors of the entire state shall be signed by at least one thousand five hundred eligible electors in each congressional district.

(d) (Deleted by amendment, L. 93, p. 1405, § 29, effective July 1, 1993.)

(3) No person shall be placed in nomination by petition on behalf of any political party unless the person has been affiliated with the political party for at least twelve months prior to the date of filing the petition, as shown by the registration books of the county clerk and recorder.

(4) No person who attempted and failed to receive at least ten percent of the votes for the nomination of a political party assembly for a particular office shall be placed in nomination by petition on behalf of the political party for the same office.

(5) Party petitions shall not be circulated nor any signatures be obtained prior to the last Monday in March. Petitions shall be filed no later than seventy-five days before the primary election.

Source: L. 92: Entire part R&RE, p. 684, § 7, effective January 1, 1993. **L. 93:** (2) amended, p. 1405, § 29, effective July 1. **L. 98:** (2)(a) to (2)(c) amended, p. 634, § 6, effective May 6. **L. 99:** (5) amended, p. 764, § 24, effective May 20. **L. 2000:** (1) amended, p. 2029, § 5, effective August 2. **L. 2005:** (5) amended, p. 1399, § 16, effective June 6; (5) amended, p. 1434, § 16, effective June 6.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Subsection (2)(c)(I)(B) provided for the repeal of subsection (2)(c)(I), effective January 1, 1999. (See L. 98, p. 634.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

In addition to nominees designated by party assembly, a party member desirous of the party's nomination at the primary election may become a

candidate by filing a petition signed by the requisite number of the electors of his party residing within the district from which he seeks to be elected. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

And it is permissible and possible for several candidates for the party's nomination to be placed on the primary ballot by this procedure. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-802. Petitions for nominating minor political party and unaffiliated candidates for a partisan office. (1) Candidates for partisan public offices to be filled at a general or congressional vacancy election who do not wish to affiliate with a major political party may be nominated, other than by a primary election or a convention, in the following manner:

(a) A petition for nominating minor political party or unaffiliated candidates shall be prepared, indicating the name and address of any candidate for the office to be filled. The petition shall indicate the name of the minor political party or designate in not more than three words the political or other name selected by the signers to identify an unaffiliated candidate. No name of any political party shall be used, in whole or in part, to identify an unaffiliated candidate.

(b) Each petition shall contain only the name of one candidate for one office; except that any petition for a candidate for governor shall also include a candidate for lieutenant governor, and together they shall be considered joint candidates at the general election. In the case of nominations for electors of president and vice president of the United States, the names of the candidates may be added to the political or other name designated on the petition.

(c) Every petition for the office of president and vice president, for statewide office, for congressional district office, for the office of member of the general assembly, for district attorney, and for county office shall be signed by eligible electors residing within the district or political subdivision in which the officer is to be elected. The number of signatures of eligible electors on a petition shall be as follows:

(I) At least five thousand for the office of president and vice president;

(II) The lesser of one thousand or two percent of the votes cast for all candidates for that office in the most recent general election for any statewide office;

(III) The lesser of eight hundred or two percent of the votes cast in the congressional district in the most recent general election for the office of member of the United States house of representatives, member of the state board of education for a congressional district, or member of the board of regents of the university of Colorado for a congressional district;

(IV) The lesser of six hundred or two percent of the votes cast in the senate district in the most recent general election for the office of member of the state senate;

(V) The lesser of four hundred or two percent of votes cast in the house district in the most recent general election for the office of member of the state house of representatives;

(VI) The lesser of six hundred fifty or two percent of the votes cast in the district in the most recent general election for the office of district attorney; and

(VII) The lesser of seven hundred fifty or two percent of the votes cast for all candidates for that office in the most recent general election for any county office.

(d) (I) No petition to nominate an unaffiliated candidate, except petitions for candidates for vacancies to unexpired terms of representatives in congress and for presidential electors, shall be circulated or any signatures obtained thereon earlier than one hundred eighty-six days before the general election.

(II) No petition to nominate a minor political party candidate shall be circulated nor any signatures obtained thereon earlier than the last Monday in March in the general election year.

(e) The petition to nominate an unaffiliated candidate may designate or appoint upon its face one or more unaffiliated registered electors as a committee to fill vacancies in accordance with section 1-4-1002 (4) and (5). However, in the case of a petition for the office of state senator or state representative, the petition shall designate or appoint upon its face three or more unaffiliated registered electors as a committee to fill vacancies in accordance with section 1-4-1002 (4) and (5) and section 1-12-203.

(f) (I) Except as provided by subparagraph (II) of this paragraph (f), petitions shall be filed no later than 3 p.m. on the one hundred fortieth day before the general election or 3 p.m. on the fifty-fifth day preceding the congressional vacancy election.

(II) Petitions to nominate candidates of minor political parties shall be filed no later than seventy-five days before the primary election as specified in section 1-4-101.

(g) No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as affiliated with a minor political party or as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed; except that, if such nomination is for a nonpartisan election, the person shall be an eligible elector of the political subdivision or district and be a registered elector, as shown on the books of the county clerk and recorder, on the date of the earliest signature on the petition.

Source: L. 92: Entire part R&RE, p. 685, § 7, effective January 1, 1993. L. 95: (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), and (1)(g) amended, pp. 861, 885, 830, §§ 116, 2, 29, effective July 1. L. 96: IP(1) amended, p. 1739, § 21, effective July 1. L. 99: (1)(d) and (1)(f) amended, p. 764, § 25, effective May 20. L. 2003: IP(1), (1)(a), (1)(d), (1)(e), (1)(f), and (1)(g) amended, p. 1310, § 7, effective April 22. L. 2005: (1)(d) and (1)(f) amended, p. 1399, § 17, effective June 6; (1)(d) and (1)(f) amended, p. 1434, § 17, effective June 6.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For filling vacancies in a nomination for an unaffiliated candidate, see § 1-4-1002 (4) and (5).

ANNOTATION

- I. General Consideration.
- II. Purpose.
- III. Requisites for Nomination.
- IV. Requirements of Section.
- V. Filing.
- VI. Protection of Name of Party.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 219, 220, 242-244.

C.J.S. See 29 C.J.S., Elections, § 195.

Law reviews. For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minor party ballot access, see 62 Den. U. L. Rev. 101 (1985). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with minor party ballot access, see 63 Den. U. L. Rev. 247 (1986).

Annotator's note. The following annotations included cases decided under former provisions similar to this section.

The provision for nominating an independent candidate by petition shall receive such construction as will afford to the elector the greater liberty in casting

his ballot. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

An appeal from the denial of an injunction to place a candidate's name on the ballot for the general

election will be dismissed as moot where the election has come and gone. Thournir v. Buchanan, 710 F.2d 1461 (10th Cir. 1983).

II. PURPOSE.

The purpose of providing for nomination by petition is to permit electors to make independent nominations for public offices by petition under a name they may lawfully choose, and to vote for such nominees by that designation. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

In order to give the electors the widest possible latitude in naming candidates, candidates can be nominated by petition direct, without submitting their candidacy to a vote at the primary election. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

III. REQUISITES FOR NOMINATION.

No violation of equal protection. Requirement that each nominating petition circulated by an individual or political organization contain the name of a single candidate only does not violate equal protection. Nat'l Prohibition Party v. State of Colo., 752 P.2d 80 (Colo. 1988); Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991).

Application of that portion of subsection (1)(g) requiring a congressional candidate to be an eligible elector of the congressional district in which he seeks election violates the qualifications clause of the U.S. Constitution. Campbell v. Buckley, 46 F. Supp.2d 1115 (D. Colo. 1999), aff'd, 233 F.3d 1229 (10th Cir. 2000).

The requirement of subsection (1)(i) (now (1)(g)) that a person be registered as "unaffiliated" for a period of one year as a prerequisite for running for public office is constitutional. Thournir v. Meyer, 708 F. Supp. 1183 (D. Colo. 1989).

Legislative intent of subsection (1)(g) is clear: No unaffiliated candidate may be on the ballot unless registered as an unaffiliated voter at least 12 months prior to last date for filing applications. Conte v. Meyer, 882 P.2d 962 (Colo. 1994).

In order to make nominations by individuals two things are necessary: (1) The filing of a certificate with the proper officer substantially in the form required by law containing the requisite number of signatures of persons entitled to sign; and (2) an acceptance on the part of the candidates so named. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

Unless the latter accept, they are not nominees, and are no more candidates, or affected by the petitions filed, than if none had ever been filed. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

IV. REQUIREMENTS OF SECTION.

The electors are not required to state anything in the petition regarding the political affiliation of the nominees. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

The subscriber's character as a voter is established by affidavit; no more can be required. Benson v. Gillespie, 62 Colo. 206, 161 P. 295 (1916).

One who has accepted the nomination of a political party may be nominated by petition of independent voters, assuming a different party designation. Pease v. Wilkin, 53 Colo. 404, 127 P. 230 (1912).

The unaffiliation requirement of subsection (1)(i) (now (1)(g)) is not unconstitutional because it serves the compelling state interest of protecting the integrity of Colorado's balloting process and it does not unnecessarily or unfairly impinge on a prospective candidate's right of access to the ballot. Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991).

V. FILING.

The words "not less than" do not require full clear days. The words "not less than" prefixed to the number of days specified in the provision for nomination by petition do not require full clear days. The time limitation is to be interpreted as if the words had been omitted. Luedke v. Todd, 109 Colo. 326, 124 P.2d 932 (1942).

Thus a certificate of nomination filed with the town clerk on February 21st would still be in time for a town election to be held on April 7th. Luedke v. Todd, 109 Colo. 326, 142 P.2d 932 (1942).

Secretary of state or deputy may pass on validity of petition. Although petitions for nominating independent candidates for offices to be voted on by the entire state are properly filed with the secretary of state, the secretary of state is not vested solely with the decision-making power in passing upon the validity of objections to such petition because the secretary of state has the power to appoint a deputy to act for the secretary if the secretary deems it necessary, and the deputy shall have full authority to act in all things relating to the office. Olshaw v. Buchanan, 186 Colo. 362, 527 P.2d 545 (1974).

VI. PROTECTION OF NAME OF PARTY.

Nominations by petitions protected in same manner as nominations by convention. The nomination, by petition, of the candidates of an organized party, authorized by such party, are to be protected to the same extent, and in the same manner, as nominations made by convention, even though such party have not sufficient strength to make nominations by convention. Philips v. Smith, 25 Colo. 456, 55 P. 184 (1898); McBroom v. Brown, 53 Colo. 412, 127 P. 957 (1912).

The authorized use by others of the name of such party, in a petition making nominations for an approaching election, even though prior in point of time to

a certificate presented by the proper authorities of the party, will not prevent the filing of the latter. *Philips v. Smith*, 25 Colo. 456, 55 P. 184 (1898); *McBroom v. Brown*, 53 Colo. 412, 127 P. 957 (1912).

Name may not be appropriated by others. The name adopted by a new political party placed on a ballot by petition is not subject to appropriation by other petitioners. *McBroom v. Brown*, 53 Colo. 412, 127 P. 957 (1912).

Section unenforceable. In light of the Colorado Supreme Court decision in *McBroom v. Brown*, 53 Colo. 412, 127 P. 957 (1912), this section which distinguishes between political parties and political organizations by only allowing parties to prevent unendorsed candidates from running under the party name is unenforceable. *Baer v. Meyer*, 577 F. Supp. 838 (D. Colo. 1984), *aff'd in part and rev'd in part on other grounds*, 728 F.2d 471 (10th Cir. 1984).

1-4-803. Petitions for nominating school district directors. (1) (a) Any person who desires to be a candidate for the office of school director in a school district in which fewer than one thousand students are enrolled shall file a nomination petition signed by at least twenty-five eligible electors from throughout the school district, regardless of the school district's plan of representation. Any person who desires to be a candidate for the office of school director in a school district in which one thousand students or more are enrolled shall file a nomination petition signed by at least fifty eligible electors from throughout the school district, regardless of the school district's plan of representation. An eligible elector may sign as many petitions as candidates for whom that elector may vote.

(b) A person who desires to be a candidate for the office of school director may not circulate the nomination petition for signatures prior to ninety days before the election.

(2) The nomination petition must be filed no later than sixty-seven days before the election date.

(3) If a school district has an at-large method of representation and if terms of different lengths are to be filled at a district election, candidates must designate on the nomination petition the term for which they are running.

(4) A candidate for the office of school director shall not run as a candidate of any political party for that school directorship.

(5) The candidate for the office of school director shall have been a registered elector of the school district, as shown on the books of the county clerk and recorder, for at least twelve consecutive months prior to the date of the election.

Source: **L. 92:** Entire part R&RE, p. 686, § 7, effective January 1, 1993. **L. 93:** (2) amended, p. 1406, § 30, effective July 1. **L. 94:** (1) amended, p. 1153, § 14, effective July 1. **L. 95:** (1) amended, p. 831, § 30, effective July 1. **L. 98:** (5) amended, p. 291, § 2, effective July 1. **L. 99:** (1) amended, p. 468, § 1, effective April 30; (2) amended, p. 765, § 26, effective May 20. **L. 2006:** (1) and (5) amended, p. 1024, § 6, effective May 25.

1-4-804. Petitions for nominating nonpartisan special district directors. (Repealed)

Source: **L. 92:** Entire part R&RE, p. 687, § 7, effective January 1, 1993. **L. 93:** Entire section amended, p. 1406, § 31, effective July 1. **L. 94:** (1) amended and (3) added, p. 1153, § 15, effective July 1. **L. 96:** (4) added, p. 1740, § 22, effective July 1. **L. 99:** Entire section repealed, p. 450, § 5, effective August 4.

1-4-805. Petitions for nominating municipal candidates in coordinated elections. Any person who desires to be a candidate for a municipal office in a coordinated election shall, in lieu of the requirements of this article, comply with the nominating petition procedure set forth in the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.; except that part 11 of this article, concerning write-in candidate affidavits, shall apply in such municipal elections, and any nominating petition may be circulated and signed beginning on the ninety-first day prior to the election and shall be filed with the municipal clerk no later than the seventy-first day prior to the date of the election. The petition may be amended to correct or replace signatures that the clerk finds are not in apparent conformity with the requirements of the municipal election code at any time before the sixty-seventh day before the election.

Source: L. 93: Entire section added, p. 1406, § 32, effective July 1. **L. 95:** Entire section amended, p. 831, § 31, effective July 1. **L. 96:** Entire section amended, p. 1740, § 23, effective July 1. **L. 99:** Entire section amended, p. 765, § 27, effective May 20. **L. 2004:** Entire section amended, p. 1522, § 1, effective May 28.

PART 9

PETITIONS FOR CANDIDACY AND RECALL

Editor's note: This part 9 was numbered as 49-7-1, 49-6-7, and 49-6-12 in C.R.S. 1963. The substantive provisions of this part 9 were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as part of the repeal and reenactments are shown in editor's notes following each section.

1-4-901. Designation of petition. (1) The petition for a candidate may consist of one or more sheets, to be fastened together in the form of one petition section, but each sheet shall contain the same heading and each petition section shall contain one sworn affidavit of the circulator. No petition shall contain the name of more than one person for the same office.

(2) Repealed.

Source: L. 92: Entire part R&RE, p. 687, § 7, effective January 1, 1993. **L. 93:** (2) amended, p. 1406, § 33, effective July 1. **L. 95:** (2) amended, p. 831, § 32, effective July 1. **L. 96:** (2) repealed, p. 1740, § 24, effective July 1. **L. 2001:** (1) amended, p. 1002, § 4, effective August 8.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (3) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For designation of candidates by assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for nomination of candidates, see § 1-4-701.

ANNOTATION

- I. General Consideration.
- II. Apparent Conformity.
- III. Proceedings Summary.
- IV. Jurisdiction.
- V. Review.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 257, 258.

C.J.S. See 29 C.J.S., Elections, § 195.

Annotator's note. The following annotations are taken from cases decided under former provisions similar to this section.

Failure to pursue remedies under the objection provision does not constitute waiver of the right of an elector to contest the eligibility of one to be a

candidate of his political party. *Ray v. Mickelson*, 196 Colo. 325, 584 P.2d 1215 (1978).

II. APPARENT CONFORMITY.

The secretary of state, in the absence of objection, is not vested with authority to refuse to certify a nomination because he has some objection to it for some substantial reason. *Mills v. Newell*, 30 Colo. 377, 70 P. 405 (1902).

He may, on his own motion, refuse to file a certificate, based on some formal ground. *Mills v. Newell*, 30 Colo. 377, 70 P. 405 (1902).

But if it is "in apparent conformity" with the applicable provisions the secretary may not, of his own motion, and in the absence of some objection based upon matters of substance, refuse to certify the nomination. *Mills v. Newell*, 30 Colo. 377, 70 P. 405 (1902).

The law regards certificates of nomination as having been filed where the parties presenting them did all that was possible in complying with the designation and nomination provision even though the secretary of state refused to file the certificate. *Mills v. Newell*, 30 Colo. 377, 70 P. 405 (1902).

The objection provision does not contemplate that void certificates of nomination can be cured or

amended so as to make them valid after the time for filing such certificates of nomination has expired. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

III. PROCEEDINGS SUMMARY.

The formalities which are required in ordinary civil actions need not be strictly observed in proceedings based on objections to designations and nominations. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

IV. JURISDICTION.

The filing officers in the first instance and the courts upon review have jurisdiction to determine the regularity of party conventions and the claims of rival factions of the same political party to have their nominees placed on the official ballot. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897); Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897); Whipple v. Owen, 24 Colo. 319, 50 P. 861 (1897); McCoach v. Whipple, 24 Colo. 379, 51 P. 164 (1897); Whipple v. Broad, 25 Colo. 407, 55 P. 172 (1898); Whipple v. Wheeler, 25 Colo. 421, 55 P. 188 (1898); Spencer v. Maloney, 28 Colo. 38, 62 P. 850 (1900).

The decision of the filing officer as to formal matters in a certificate of nomination is final. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

But his decisions of matters of substance are reviewable by lower courts. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

And when reviewed by a lower court in the manner prescribed, the decision of such lower court is final. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Subject only to the power of the supreme court, in its discretion, to review summarily the judicial proceeding below. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

V. REVIEW.

A review is ordinarily had of record only, and as made by the lower tribunal. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Yet the review may not be so limited. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Because of accompanying or explanatory words, the review may be enlarged so as to embrace the taking of additional evidence, or practically to constitute a trial de novo. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

The review in the trial courts contemplated by the objection provision was such as the section on settlement of controversies provided. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

And it is clear that the provision for settlement of controversies contemplates the taking of evidence where the issues require it. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

The objection provision does not contemplate a review in supreme court of the same character as that

provided for in county or district court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

Review in the supreme court is to be upon the record as made in the lower court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

Decision of trial court will not be disturbed except for strong and persuasive reasons. Since the decision of the trial court is final, that decision should not be disturbed except for strong and persuasive reasons. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

The supreme court should interfere if the trial court acts without jurisdiction, or in excess thereof, or acts arbitrarily, or grossly abuses its discretion. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

Supreme court may in its discretion accept or reject an appeal with respect to nominations of candidates, and if it elects to accept the appeal, it may proceed in a summary way to dispose of it. In re Weber, 186 Colo. 61, 525 P.2d 465 (1974).

The matter of review by the supreme court, in an action to compel a town clerk to accept and file certificate of nomination and to certify and have printed on the official ballot the names of certain candidates, is entirely discretionary with the court. Luedke v. Todd, 109 Colo. 326, 124 P.2d 932 (1942).

Objection to petition not raised before county clerk cannot be raised on review. In a proceeding to protest the placing of nominations upon the official ballot, an objection that the petition failed to show the authority of the petitioner to make the protest, if not raised before the county clerk, cannot be raised on review. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

In order to invoke the appellate jurisdiction of the supreme court, in the exercise of its discretion to review the proceedings of the lower court determining the validity of objections to certificates of nomination, a certified copy of the record and judgment of the trial court, or the material parts thereof, sufficient to present the questions relied upon, with a brief petition stating the nature of the controversy, the points at issue, and the errors relied upon, should be filed in the supreme court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

A motion should then be made, based upon this petition, asking the court to exercise its appellate jurisdiction, specifying time and place of hearing of the application. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

And notice of the motion should be served upon the opposing party. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

In an action to compel a county clerk to receive and file nominations for county offices which was refused by him on the ground that no election for such offices could be held at the ensuing election, where in the absence of one of the judges of the supreme court the other two disagree as to whether the court should exercise its discretion to review the judgment of the lower court even if it has jurisdiction to do so, the proceeding must be dismissed and it is unnecessary to determine whether or not the court has jurisdiction to review the judgment of the

lower court. *Beach v. Berdel*, 31 Colo. 505, 74 P. 1129 (1903).

District judge was interested in the result and disqualified to try cause. Where a list of nominations for county officers filed with the county clerk was protested on the ground that the party name assumed was an infringement on the name of another political party and tended to deceive the voters, a district judge who had been

nominated under the same party name and the nomination filed with the secretary of state was interested in the result and disqualified to try the cause, although the judgment in the cause would not directly affect his own nomination, since it involved the determination of a question which if raised in the proper tribunal would determine the validity of his own nomination on the ticket. *Phillips v. Curley*, 28 Colo. 34, 62 P. 837 (1900).

1-4-902. Form of petition. (1) The signatures to a petition need not all be appended to one paper, but no petition shall be legal that does not contain the requisite number of names of eligible electors whose names do not appear on any other petition previously filed for the same office or recall under the provisions of this section.

(2) At the top of each page shall be printed, in bold-faced type, the following:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same candidate or to knowingly sign the petition when not a registered elector.

Do not sign this petition unless you are an eligible elector. To be an eligible elector you must be registered to vote and eligible to vote in (name of political subdivision) elections.

Do not sign this petition unless you have read or have had read to you the proposed nomination petition in its entirety and understand its meaning.

(3) Directly following the warning in subsection (2) of this section shall be printed in bold-faced type the following:

Petition to nominate (name of person sought to be elected to) the office of (title of office).

Source: L. 92: Entire part R&RE, p. 687, § 7, effective January 1, 1993. L. 93: (3) amended, p. 1766, § 4, effective June 6. L. 95: (2) and (3) amended, p. 831, § 33, effective July 1.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801(1)(d) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301(1)(d) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 258.

1-4-903. Approval of petition. No petition shall be circulated until it has been approved as meeting the requirements of this section as to form. The secretary of state or the official with whom the petitions are to be filed shall approve or disapprove a petition as to form by the close of the second business day following submission of the proposed petition. The secretary of state or official, as applicable, shall mail written notice of the action taken to the person who submitted the petition on the day the action is taken.

Source: L. 92: Entire part R&RE, p. 688, § 7, effective January 1, 1993. L. 95: Entire section amended, p. 832, § 34, effective July 1. L. 96: Entire section amended, p. 1740, § 25, effective July 1.

Cross references: For filing a certificate of designation, see § 1-4-604; for convention nominations, see § 1-4-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 246-250.

C.J.S. See 29 C.J.S., Elections, § 195.

Annotator's note. The following annotations are taken from a case decided under a former provision similar to this section.

The "vacancy" section must be construed in the light of the two-pronged framework for the designation and nomination of candidates either by the party assembly or by petition. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

A vacancy comes into being when a party assembly fails to designate any candidate for nomination to a particular office. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

And such "vacancy" continues to exist until it is filled by the party central committee or the time for filing it expires by the term of the statute. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

The "vacancy" created by the party assembly's failure to designate a candidate for nomination may be filled by the subsequent action of the appropriate party central committee. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

This is true even though a candidate for party nomination has in the interim between the assembly and the action of the central committee been placed on the primary ballot by petition. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-904. Signatures on the petitions. (1) Every petition shall be signed only by eligible electors.

(2) (a) For petitions to nominate candidates from a major political party in a partisan election, each signer shall be affiliated with the major political party named in the petition and shall state the following to the circulator: That the signer has been affiliated with the major political party named in the petition for at least twenty-nine days as shown on the registration books of the county clerk and recorder; and that the signer has not signed any other petition for any other candidate for the same office.

(b) Petitions to nominate candidates from a minor political party or unaffiliated candidates in a partisan election may be signed by any eligible elector who has not signed any other petition for any other candidate for the same office.

(3) Unless physically unable, all electors shall sign their own signature and shall print their names, their respective residence addresses, including the street number and name, the city or town, the county, and the date of signature. Each signature on a petition shall be made, to the extent possible, in black ink.

(4) Any person, except a circulator, may assist an elector who is physically unable to sign the petition in completing the information on the petition as required by law. On the petition, immediately following the name of the disabled elector, the person providing assistance shall both sign and shall state that the assistance was given to the disabled elector.

Source: L. 92: Entire part R&RE, p. 688, § 7, effective January 1, 1993. L. 93: (1) amended, p. 34, effective July 1. L. 99: (2) amended, p. 765, § 28, effective May 20. L. 2002: (2) amended, p. 1626, § 3, effective June 7. L. 2003: (2) amended, p. 1311, § 8, effective April 22.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (3) as said section existed in 1991, the year prior to

the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Cross references: For designation of candidates for primary election, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for nomination of candidates, see § 1-4-701.

1-4-905. Circulators. (1) No person shall circulate a petition to nominate a candidate unless the person is a resident of the state, a citizen of the United States, at least eighteen years of age, and, for partisan candidates, registered to vote and affiliated with the political party mentioned in the petition at the time the petition is circulated, as shown by the registration books of the county clerk and recorder.

(2) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include: The affiant's printed name, the address at which the affiant resides, including the street name and number, the city or town, the county, and the date of signature; a statement that the affiant was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; a statement that the affiant circulated the section of the petition; a statement that each signature on the petition section is the signature of the person whose name it purports to be; a statement that to the best of the affiant's knowledge and belief each of the persons signing the petition section was, at the time of signing, an eligible elector; and a statement that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing the signer to sign the petition.

(3) The designated election official shall not accept for filing any section of a petition which does not have attached to it the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed is invalid.

Source: L. 92: Entire part R&RE, p. 689, § 7, effective January 1, 1993. L. 98: (1) amended, p. 634, § 7, effective May 6. L. 2001: (1) amended, p. 1002, § 5, effective August 8. L. 2007: (1) and (2) amended, p. 1971, § 9, effective August 3.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (8) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 (8) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Subsections (1) and (2) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-4-906. Candidate's acceptance. Every nominating petition before it is filed shall have attached to it a notarized acceptance of the nomination of the candidate or notarized acceptances by both of the joint candidates. Each acceptance of nomination shall contain the full name of the candidate or joint candidate as the name will appear on the ballot and the candidate's full address.

Source: L. 92: Entire part R&RE, p. 690, § 7, effective January 1, 1993.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (4) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 (4) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-907. Filing of petition. The petition, when executed and acknowledged as prescribed in this part 9, shall be filed as follows: With the secretary of state if it is for an office that is voted on by the electors of the entire state or of a congressional district or for the offices of members of the general assembly or district attorney or a district office of state concern; with the county clerk and recorder if it is for a county office; and with the designated election official if it is for a nonpartisan local election.

Source: **L. 92:** Entire part R&RE, p. 690, § 7, effective January 1, 1993. **L. 94:** Entire section amended, p. 1621, § 1, effective May 31. **L. 95:** Entire section amended, p. 832, § 35, effective July 1.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801 (1) (h) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301 (1) (h) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-908. Verification of petition and official statement. (1) Upon filing, the designated election official for the political subdivision shall review all petition information and verify the information against the registration records, and, where applicable, the county assessor's records. The secretary of state shall establish guidelines for verifying petition entries.

(2) (Deleted by amendment, L. 95, p. 832, § 36, effective July 1, 1995.)

(3) After review, the official shall notify the candidate of the number of valid signatures and whether the petition appears to be sufficient or insufficient. In the case of a petition for nominating an unaffiliated candidate, the official shall provide notification of sufficiency or insufficiency to the candidate on or before the primary election date. Upon determining that the petition is sufficient and after the time for protest has passed, the designated election official shall certify the candidate to the ballot, and, if the election is a coordinated election, so notify the coordinated election official.

Source: **L. 92:** Entire part R&RE, p. 690, § 7, effective January 1, 1993. **L. 94:** (1) and (3) amended, p. 1154, § 16, effective July 1. **L. 95:** (2) and (3) amended, pp. 832, 886, §§ 36, 3, effective July 1.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-603 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Amendments to subsection (3) by House Bill 95-1022 and House Bill 95-1241 were harmonized.

1-4-909. Protest of designations and nominations. (1) A petition or certificate of designation or nomination that has been verified and appears to be sufficient under this code shall be deemed valid unless a petition for a review of the validity of the petition pursuant to section 1-1-113 is filed with the district court within five days after the election official's statement of sufficiency is issued or, in the case of a certificate of designation, within five days after the certificate of designation is filed with the designated election official.

(1.5) If the election official determines that a petition is insufficient, the candidate named in the petition may petition the district court within five days for a review of the determination pursuant to section 1-1-113.

(2) This section does not apply to any nomination made at a primary election.

Source: **L. 92:** Entire part R&RE, p. 690, § 7, effective January 1, 1993. **L. 93:** (1) amended, p. 1407, § 35, effective July 1. **L. 95:** (1) amended, p. 833, § 37, effective July 1. **L. 2001:** (1) amended, p. 1002, § 6, effective August 8. **L. 2007:** (1) amended and (1.5) added, p. 1971, § 10, effective August 3.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-901 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Subsections (1) and (1.5) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For designation of candidates by assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for nomination of candidates, see § 1-4-701.

ANNOTATION

- I. General Consideration.
- II. Apparent Conformity.
- III. Proceedings Summary.
- IV. Jurisdiction.
- V. Review.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 218.

C.J.S. See 29 C.J.S., Elections, § 246.

Annotator's note. The following annotations

include cases decided under former provisions similar to this section.

Failure to pursue remedies under the objection provision does not constitute waiver of the right of an elector to contest the eligibility of one to be a candidate of his political party. Ray v. Mickelson, 196 Colo. 325, 584 P.2d 1215 (1978).

II. APPARENT CONFORMITY.

The secretary of state, in the absence of objection, is not vested with authority to refuse to certify a nomination because he has some objection to it for some substantive reason. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

He may, on his own motion, refuse to file a certificate, based on some formal ground. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

But if it is "in apparent conformity" with the applicable provisions the secretary may not, of his own motion, and in the absence of some objection based upon matters of substance, refuse to certify the nomination. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

The law regards certificates of nomination as having been filed where the parties presenting them did all that was possible in complying with the designation and nomination provision even though the secretary of state refused to file the certificate. Mills v. Newell, 30 Colo. 377, 70 P. 405 (1902).

The objection provision does not contemplate that void certificates of nomination can be cured or amended so as to make them valid after the time for filing such certificates of nomination has expired. O'Connor v. Smithers, 45 Colo. 23, 99 P. 46 (1908).

III. PROCEEDINGS SUMMARY.

The formalities which are required in ordinary civil actions need not be strictly observed in proceedings based on objections to designations and nominations. Phillips v. Curley, 28 Colo. 34, 62 P. 837 (1900).

IV. JURISDICTION.

The filing officers in the first instance and the courts upon review have jurisdiction to determine the regularity of party conventions and the claims of rival factions of the same political party to have their nominees placed on the official ballot. Leighton v. Bates, 24 Colo. 303, 50 P. 856, 50 P. 858 (1897); Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897); Whipple v. Owen, 24 Colo. 319, 50 P. 861 (1897); McCoach v. Whipple, 24 Colo. 379, 51 P. 164 (1897); Whipple v. Broad, 25 Colo. 407, 55 P. 172 (1898); Whipple v. Wheeler, 25 Colo. 421, 55 P. 188 (1898); Spencer v. Maloney, 28 Colo. 38, 62 P. 850 (1900).

The decision of the filing officer as to formal matters in a certificate of nomination is final. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

But his decisions of matters of substance are reviewable by lower courts. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

And when reviewed by a lower court in the manner prescribed, the decision of such lower court is final. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Subject only to the power of the supreme court, in its discretion, to review summarily the judicial proceeding below. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

V. REVIEW.

A review is ordinarily had of record only, and as made by the lower tribunal. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Yet the review may not be so limited. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

Because of accompanying or explanatory words, the review may be enlarged so as to embrace the taking of additional evidence, or practically to constitute a trial de novo. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

The review in the trial courts contemplated by the objection provision was such as the section on settlement of controversies provided. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

And it is clear that the provision for settlement of controversies contemplates the taking of evidence where the issues require it. Leighton v. Bates, 24 Colo. 303, 50 P. 856 (1897).

The objection provision does not contemplate a review in supreme court of the same character as that provided for in county or district court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

Review in the supreme court is to be upon the record as made in the lower court. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

Decision of trial court will not be disturbed except for strong and persuasive reasons. Since the decision of the trial court is final, that decision should not be disturbed except for strong and persuasive reasons. Liggett v. Bates, 24 Colo. 314, 50 P. 860 (1897).

The supreme court should interfere if the trial court acts without jurisdiction, or in excess thereof, or acts arbitrarily, or grossly abuses its discretion. *Liggett v. Bates*, 24 Colo. 314, 50 P. 860 (1897).

Supreme court may in its discretion accept or reject an appeal with respect to nominations of candidates, and if it elects to accept the appeal, it may proceed in a summary way to dispose of it. *In re Weber*, 186 Colo. 61, 525 P.2d 465 (1974).

The matter of review by the supreme court, in an action to compel a town clerk to accept and file certificate of nomination and to certify and have printed on the official ballot the names of certain candidates, is entirely discretionary with the court. *Luedke v. Todd*, 109 Colo. 326, 124 P.2d 932 (1942).

Objection to petition not raised before county clerk cannot be raised on review. In a proceeding to protest the placing of nominations upon the official ballot, an objection that the petition failed to show the authority of the petitioner to make the protest, if not raised before the county clerk, cannot be raised on review. *Phillips v. Curley*, 28 Colo. 34, 62 P. 837 (1900).

In order to invoke the appellate jurisdiction of the supreme court, in the exercise of its discretion to review the proceedings of the lower court determining the validity of objections to certificates of nomination, a certified copy of the record and judgment of the trial court, or the material parts thereof, sufficient to present the questions relied upon, with a brief petition stating the nature of the controversy, the points at issue, and the errors relied upon, should be filed in the supreme court. *Liggett v. Bates*, 24 Colo. 314, 50 P. 860 (1897).

A motion should then be made, based upon this petition, asking the court to exercise its appellate jurisdiction, specifying time and place of hearing of the

application. *Liggett v. Bates*, 24 Colo. 314, 50 P. 860 (1897).

And notice of the motion should be served upon the opposing party. *Liggett v. Bates*, 24 Colo. 314, 50 P. 860 (1897).

In an action to compel a county clerk to receive and file nominations for county offices which was refused by him on the ground that no election for such offices could be held at the ensuing election, where in the absence of one of the judges of the supreme court the other two disagree as to whether the court should exercise its discretion to review the judgment of the lower court even if it has jurisdiction to do so, the proceeding must be dismissed and it is unnecessary to determine whether or not the court has jurisdiction to review the judgment of the lower court. *Beach v. Berdel*, 31 Colo. 505, 74 P. 1129 (1903).

District judge was interested in the result and disqualified to try cause. Where a list of nominations for county officers filed with the county clerk was protested on the ground that the party name assumed was an infringement on the name of another political party and tended to deceive the voters, a district judge who had been nominated under the same party name and the nomination filed with the secretary of state was interested in the result and disqualified to try the cause, although the judgment in the cause would not directly affect his own nomination, since it involved the determination of a question which if raised in the proper tribunal would determine the validity of his own nomination on the ticket. *Phillips v. Curley*, 28 Colo. 34, 62 P. 837 (1900).

1-4-910. Protest to a recall petition. (Repealed)

Source: L. 92: Entire part R&RE, p. 691, § 7, effective January 1, 1993. L. 94: Entire section amended, p. 1154, § 17, effective July 1. L. 95: Entire section repealed, p. 833, § 38, effective July 1.

1-4-911. Review of a protest. The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence. The decision upon matters of substance is open to review, if prompt application is made, as provided in section 1-1-113. The remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any judicial proceeding in a summary way.

Source: L. 92: Entire part R&RE, p. 691, § 7, effective January 1, 1993.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-901 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-912. Cure. (1) In case a petition for nominating an unaffiliated candidate is not sufficient, it may be amended once no later than 3 p.m. on the ninety-fifth day before the general election, 3 p.m. on the fifty-fifth day preceding a congressional vacancy election, or 3 p.m. on the sixty-seventh day before an election that is not being held concurrently with the general election. If a petition for nominating an unaffiliated candidate is amended, the designated election official shall notify the candidate of whether the petition is sufficient or insufficient no later than the ninetieth day before the general election.

(2) Repealed.

Source: **L. 92:** Entire part R&RE, p. 691, § 7, effective January 1, 1993. **L. 93:** Entire section amended, p. 1407, § 36, effective July 1. **L. 94:** (1) amended, p. 1155, § 18, effective July 1. **L. 95:** (1) amended and (2) repealed, pp. 887, 861, 833, §§ 4, 117, 39, effective July 1. **L. 99:** (1) amended, p. 765, § 29, effective May 20. **L. 2005:** (1) amended, p. 1399, § 18, effective June 6; (1) amended, p. 1434, § 18, effective June 6.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-801 (1) (d) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-301 (1) (d) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Amendments to subsection (1) by House Bill 95-1022 and House Bill 95-1241 were harmonized.

1-4-913. Defacing of petitions. (Repealed)

Source: **L. 92:** Entire part R&RE, p. 692, § 7, effective January 1, 1993. **L. 95:** Entire section repealed, p. 834, § 40, effective July 1.

PART 10

WITHDRAWALS FROM AND VACANCIES IN NOMINATIONS AND DESIGNATIONS

Editor's note: This part 10 was originally enacted as 49-6-10, 49-6-11, and 49-6-13 in C.R.S. 1963. The substantive provisions of this part 10 were repealed and reenacted in 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963. For additional information relating to the repeal and reenactment of this article in 1980, see the editor's note immediately following the article heading.

1-4-1001. Withdrawal from candidacy. (1) Any person who has accepted a designation or nomination may withdraw from candidacy at any time by filing a letter of withdrawal. The letter shall be signed and acknowledged by the candidate before some officer authorized to take acknowledgments and shall be filed with the designated election official with whom the original certificate or petition of candidacy was filed. Except in the case of a vacancy to be filled in accordance with the provisions of section 1-4-1002 (2.5), in the event that the withdrawal of candidacy is not made in time for the candidate's name to be taken off the ballot, any votes cast for the candidate shall be deemed invalid and will not be counted.

(2) Any candidate withdrawing from a designation or nomination, as provided in subsection (1) of this section, shall forthwith report the withdrawal to the persons designated in section 1-4-1002 to fill the vacancy.

Source: **L. 92:** Entire part R&RE, p. 692, § 7, effective January 1, 1993. **L. 99:** (1) amended, p. 935, § 5, effective August 4.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-4-902 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are the same as those contained in 1-14-210 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 211.

1-4-1002. Vacancies in designation or nomination. (1) Any vacancy in a party designation occurring after the party assembly at which the designation was made and no later than sixty-eight days before the primary election may be filled by the party assembly vacancy committee of the district, county, or state, depending upon the office for which the vacancy in designation has occurred. A vacancy may be caused by the declination, death, disqualification, or withdrawal of any person designated by the assembly as a candidate for nomination, or by failure of the assembly to make designation of any candidate for nomination, or by death or resignation of any elective officer after an assembly at which a candidate could have been designated for nomination for the office at a primary election had the vacancy then existed. No person is eligible for appointment to fill a vacancy in a party designation unless that person meets all requirements of candidacy as of the date of the assembly that made the original designation.

(2) A vacancy in a party designation occurring during the sixty-seven days before the primary election or on the day of the primary election may be filled by the respective party assembly vacancy committee of the district, county, or state, depending upon the office for which the vacancy in designation or nomination has occurred. A vacancy may be caused by the declination, death, disqualification, resignation, or withdrawal of the person previously designated or of the person nominated at the primary election or by declination, death, disqualification, or withdrawal of an elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed. No person is eligible for appointment to fill a vacancy in the party designation or nomination unless the person meets all of the requirements of candidacy as of the date of the primary election.

(2.3) (a) A vacancy in a party nomination, other than a vacancy for a party nomination for lieutenant governor for a general election occurring after January 1, 2001, that occurs after the day of the primary election and more than eighteen days before the general election may be filled by the respective party assembly vacancy committee of the district, county, or state, as appropriate, depending upon the office for which the vacancy in nomination has occurred in accordance with the provisions of subsection (9) of this section. A vacancy in a party nomination for lieutenant governor for a general election occurring after January 1, 2001, shall be filled by a replacement candidate for lieutenant governor nominated by the party's candidate for governor. A vacancy may be caused by the declination, death, disqualification, resignation, or withdrawal of the person nominated at the primary election or by the declination, death, disqualification, resignation, or withdrawal of an elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed. No person is eligible for appointment to fill a vacancy in the party nomination unless the person meets all of the requirements of candidacy as of the date of the primary election. When a vacancy is filled pursuant to this paragraph (a), the designated election official shall provide notice by publication of the replacement nomination in the same manner as the notice required by section 1-5-205.

(a.5) When a vacancy in a party nomination is filled pursuant to paragraph (a) of this subsection (2.3) before the designated election official has certified the ballot in accordance with section 1-5-203 (3) (a), the designated election official shall certify the name of the replacement candidate for the ballot.

(b) When a vacancy in a party nomination is filled pursuant to paragraph (a) of this subsection (2.3) after the designated election official has certified the ballot in accordance with section 1-5-203 (3) (a), the designated election official shall, to the extent reasonably practical under the circumstances:

(I) Cause the name of the replacement candidate to appear on the official ballot; or

(II) Cause to be printed and placed on the sample ballot delivered to the election judges and posted pursuant to section 1-5-413 a sticker of a different color than the sample ballot indicating the name of the replacement candidate.

(c) Notwithstanding subparagraph (I) of paragraph (b) of this subsection (2.3), a designated election official shall not be required to print replacement ballots containing the name of a replacement candidate if the official ballots containing the name of the candidate who vacated the nomination have already been printed.

(d) For purposes of this section, a vacancy is filled when the designated election official receives the certificate of nomination and the written acceptance of the replacement candidate pursuant to paragraph (a) of subsection (5) of this section.

(e) If the name of a replacement candidate designated to fill a vacancy pursuant to this subsection (2.3) does not appear on the official ballot and ballots containing the name of the candidate who vacated the nomination are used in a general election, the votes cast for the candidate who vacated the nomination shall be counted as votes for the replacement candidate.

(2.5) (a) Any vacancy in a party nomination occurring less than eighteen days before the general election that is caused by the declination, death, disqualification, or withdrawal of any person nominated at the primary election or by the declination, death, disqualification, or withdrawal of any elective officer after a primary election at which a nomination could have been made for the office had the vacancy then existed shall not be filled before the general election. In such case, the votes cast for the candidate whose declination, death, disqualification, or withdrawal caused the vacancy are to be counted and recorded, and, if the candidate receives a plurality of the votes cast, such vacancy shall be filled after the general election by the respective party vacancy committee of the district, county, or state, as appropriate, depending upon the office for which the vacancy in nomination has occurred and in the manner provided for in part 2 of article 12 of this title for filling vacancies in office.

(b) Any vacancy in a party nomination for lieutenant governor for a general election occurring after January 1, 2001, that occurs less than eighteen days before the general election that is caused by the declination, death, disqualification, or withdrawal of the nominated candidate shall not be filled before the general election. In such case, the votes cast for the candidate for governor who was a joint candidate with the candidate whose declination, death, disqualification, or withdrawal caused the vacancy shall be counted and recorded, and, if such candidate is elected, he or she shall fill the vacancy after the general election by selecting a lieutenant governor who is a member of the same political party. The senate shall have no power to confirm or deny such appointment.

(3) Any vacancy in a party nomination occurring after the convention or assembly at which the nomination was made and no later than seventy days before the congressional vacancy election, caused by the declination, death, disqualification, or withdrawal of any person nominated at the convention, may be filled in the same manner required for the original nomination. If the original nomination was made by a party convention or assembly that had delegated to a committee the power to fill vacancies, the committee may proceed to fill the same vacancy when it occurs. No person is eligible for appointment to fill a vacancy in the party nomination unless that person meets all of the requirements of candidacy as of the date of the convention or assembly at which the original nomination was made.

(4) Any vacancy in a nomination for an unaffiliated candidate caused by the declination, death, or withdrawal of any person nominated by petition or statement of intent occurring after the filing of the petition for nomination or the submittal of a statement of intent under section 1-4-303 and no later than seventy days before the general or congressional vacancy election may be filled by the person or persons designated on the petition or statement of intent to fill vacancies.

(4.5) Any vacancy in a nomination for a minor political party candidate occurring after the filing of the certificate of designation pursuant to section 1-4-1304 (3) and no later than seventy days before the general or congressional vacancy election, which is caused by the declination, death, or withdrawal of any person nominated by the minor political party, may be filled by the person or persons designated in the constitution or bylaws of the minor political party to fill vacancies.

(5) (a) The persons designated to fill any of the vacancies in subsections (1) to (4.5) of this section shall file with the designated election official with whom the original certificate of petition was filed any certificate of designation or nomination to fill the vacancy and a written acceptance signed by

the person designated or nominated no later than the close of business on the sixty-seventh day before the primary election or the sixty-ninth day before the general election, depending on when the vacancy occurred; except that, in the case of a vacancy filled pursuant to the provisions of subsection (2.3) of this section, such filing shall be done no later than the seventh day before the election affected by the vacancy.

(b) If the persons designated to fill any of the vacancies in subsections (1) to (4.5) of this section decide not to fill a vacancy, they shall in like manner file a certificate setting forth the occurrence of the vacancy, stating they do not intend to fill the vacancy.

(6) When the secretary of state or the county clerk and recorder receives a certificate of nomination to fill a vacancy, that official, in certifying the list of designees or nominees, shall replace the name of the original candidate with that of the replacement candidate. In the event the secretary of state has already certified the list, the secretary of state shall forthwith certify to the county clerk and recorders of the affected counties the name of the new nominee, the office for which the nomination is made, and the name of the person for whom the nominee is substituted. The secretary of state and the county clerk and recorders shall not accept any certificates of nomination to fill vacancies after the sixty-seventh day before election day; except that, in the case of a vacancy filled pursuant to the provisions of subsection (2.3) of this section, the secretary of state and the county clerk and recorder shall not accept any certificates of nomination to fill vacancies after the seventh day before election day.

(7) Except as otherwise provided in subsection (7.3) of this section, any vacancy in a statewide or county office, in the office of district attorney, or in the office of a state senator occurring during a term of office shall be filled at the next general election with nomination or designation by the political party as follows:

(a) If the vacancy occurs prior to the political party assembly, the designated election official shall notify the chairperson of each major political party that the office will be on the ballot for the next primary election, and candidates for the office shall be designated as provided in section 1-4-601 or 1-4-603.

(b) If the vacancy occurs after the political party assembly and no later than sixty-eight days before the primary election, the designated election official shall add the office to the notice of election and notify the chairperson of each major political party that the office will be on the ballot for the next primary election. Candidates for the office shall be designated as provided in section 1-4-603 or by the respective party central committee vacancy committee for the state, county, judicial district, or state senate district.

(c) If the vacancy occurs during the sixty-seven days before the primary election or after the primary election and no later than sixty-eight days before the general election, the designated election official shall add the office to the notice of election for the general election. Nominations for the office shall be made by the respective party central committee vacancy committee for the state, county, judicial district, or state senate district or as provided in section 1-4-802 for the nomination of unaffiliated candidates.

(7.3) After the second Tuesday of January 2003, any vacancy in the office of lieutenant governor shall be filled by the appointment by the governor of a lieutenant governor of the same political party as the governor to fill the vacancy. The senate shall have no power to confirm or deny such appointment.

(7.5) Any vacancy in a statewide or county office, in the office of district attorney, or in the office of a state senator occurring during a term of office shall be filled at the next general election with nomination or designation by a minor political party pursuant to the constitution or bylaws of the minor political party.

(8) Notwithstanding any provisions to the contrary, if a political party has established a rule regarding the length of affiliation required for a candidate for the office of United States senator or representative in congress, and a vacancy in that office occurs, then the party rule applies.

(9) (a) No vacancy committee called to fill a vacancy pursuant to the provisions of subsection (2.3) of this section may select a person to fill a vacancy at a meeting held for that purpose unless a

written notice announcing the time and location of the vacancy committee meeting was mailed to each of the committee members at least five days prior to such meeting by the chairperson of the central committee which selected the members. Mailing of the notice is effective when the notice is properly addressed and deposited in the United States mail, with first-class postage prepaid.

(b) The vacancy committee, by a majority vote of its members present and voting at a meeting called for that purpose, shall select a person who meets all of the requirements of candidacy as of the date of the primary election and who is affiliated with the same political party or minor political party, if any, shown on the registration books of the county clerk and recorder as the candidate whose declination, death, disqualification, resignation, or withdrawal caused the vacancy. No meeting shall be held until a quorum is present consisting of not less than one-half of the voting membership of the vacancy committee. No member of the vacancy committee may vote by proxy. The committee shall certify the selection to the secretary of state within seven days from the date the vacancy occurs. If the vacancy committee fails to certify a selection within seven days, the state chair of the same political party or minor political party as the candidate whose declination, death, disqualification, resignation, or withdrawal caused the vacancy, within seven days, shall fill the vacancy by appointing a person having the qualifications set forth in this subsection (9). The name of the person selected or appointed by the state chair shall be certified to the secretary of state. The vacancy shall be filled until the next general election after the vacancy occurs, when the vacancy shall be filled by election.

Source: **L. 92:** Entire part R&RE, p. 692, § 7, effective January 1, 1993. **L. 95:** (2), (4), (7), and (7)(c) amended, pp. 834, 861, §§ 41, 118, 42, effective July 1. **L. 96:** (4) amended, p. 1741, § 26, effective July 1. **L. 98:** (4.5) and (7.5) added and (5) amended, p. 257, § 9, effective April 13. **L. 99:** (1), (2), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended, p. 766, § 30, effective May 20; (2), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended and (2.3), (2.5), and (9) added, p. 930, § 2, effective August 4; (8) amended, p. 161, § 10, effective August 4. **L. 2000:** (2.3)(a), (2.5), and IP(7) amended and (7.3) added, p. 2029, § 6, effective August 2. **L. 2005:** (1), (2), (2.3)(a), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended, p. 1400, § 19, effective June 6; (1), (2), (2.3)(a), (3), (4), (4.5), (5)(a), (6), (7)(b), and (7)(c) amended, p. 1435, § 19, effective June 6. **L. 2007:** (2) and (2.3) amended, p. 1972, § 11, effective August 3.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-903 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-14-211 as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) Amendments to subsection (7) by sections 42 and 118 of House Bill 95-1241 were harmonized.

(3) Subsections (2) and (2.3) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For filing a petition or certificate of designation, see § 1-4-604; for convention nominations, see § 1-4-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 214, 215.

C.J.S. See 29 C.J.S., Elections, § 182.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The "vacancy" section must be construed in the light of the two-pronged framework for the designation and nomination of candidates either by the party assembly or by petition. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

A vacancy comes into being when a party assembly fails to designate any candidate for nomination to a particular office. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

And such "vacancy" continues to exist until it is filled by the party central committee or the time for filing it expires by the term of the statute. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

The "vacancy" created by the party assembly's failure to designate a candidate for nomination may be filled by the subsequent action of the appropriate party central committee. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

This is true even though a candidate for party nomination has in the interim between the assembly and the action of the central committee been placed on the primary ballot by petition. *Anderson v. Mullaney*, 166 Colo. 533, 444 P.2d 878 (1968).

1-4-1003. Vacancies of joint candidates. For the purposes of this part 10, no vacancy in designation or nomination for the office of governor or the office of lieutenant governor shall in any way affect the candidacy of the other joint candidate.

Source: L. 92: Entire part R&RE, p. 695, § 7, effective January 1, 1993.

PART 11

WRITE-IN CANDIDATES

Editor's note: This part 11 was numbered as parts of 49-11-7, 49-15-10, and 49-8-6 in C.R.S. 1963. The substantive provisions of this part 11 were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

Former C.R.S. section numbers for sections that were relocated as part of the repeal and reenactments are shown in editor's notes following each section.

1-4-1101. Write-in candidate affidavit of intent. (1) A person who wishes to be a write-in candidate for an office in an election shall file an affidavit of intent stating that he or she desires the office and is qualified to assume its duties if elected. A write-in candidate for governor shall designate in the affidavit a write-in candidate for lieutenant governor. The affidavit shall be filed with the secretary of state if it is for a statewide office, a seat in congress, a seat in the general assembly, the office of district attorney, or any other district office of state concern. The affidavit shall be filed with the county clerk and recorder if it is for a county office and with the designated election official if it is for a local office.

(2) No write-in vote for an office in an election shall be counted unless the person for whom the vote was cast filed the affidavit of intent required by subsection (1) of this section within the time prescribed by section 1-4-1102. No write-in vote for a candidate for governor shall be counted unless the person designated as the write-in candidate for lieutenant governor pursuant to subsection (1) of this section also filed an affidavit of intent within the time prescribed by section 1-4-1102.

Source: L. 92: Entire part R&RE, p. 695, § 7, effective January 1, 1993. **L. 96:** (1) amended, p. 1741, § 27, effective July 1. **L. 2007:** Entire section amended, p. 1973, § 12, effective August 3.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-1001 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 and 1-6-111 (6) as said sections existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section and § 1-7-309 do not conflict. This section regulates the conduct of write-in candidates and prohibits the write-in candidate who fails to file an affidavit

of intent from accumulating votes whereas § 1-7-309 regulates the conduct of voters and rejects ballots showing more names than persons to be elected to an office. *Moran v. Carlstrom*, 775 P.2d 1176 (Colo. 1989)

1-4-1102. Time of filing affidavit. (1) Except as provided in subsection (2) of this section, the affidavit of intent shall be filed by the close of business on the sixty-seventh day before a primary election and by the close of business on the seventieth day before any other election.

(2) In a nonpartisan election, the affidavit of intent shall be filed by the close of business on the sixty-fourth day before the election. If the election is to be coordinated by the county clerk and recorder, the designated election official shall forward a copy of the affidavit of intent to the coordinated election official.

Source: **L. 92:** Entire part R&RE, p. 696, § 7, effective January 1, 1993. **L. 94:** Entire section amended, p. 1768, § 25, effective January 1, 1995. **L. 95:** Entire section amended, p. 835, § 43, effective July 1. **L. 96:** Entire section amended, p. 1741, § 28, effective July 1. **L. 99:** (1) amended, p. 768, § 31, effective May 20. **L. 2005:** (1) amended, p. 1402, § 20, effective June 6; (1) amended, p. 1437, § 20, effective June 6.

Editor's note: This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-4-1001 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 (7) and 1-6-111(6) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

1-4-1103. Write-in votes for governor. No write-in vote for governor in a general election shall be counted unless it includes a write-in vote for lieutenant governor.

Source: **L. 92:** Entire part R&RE, p. 696, § 7, effective January 1, 1993. **L. 95:** Entire section amended, p. 835, § 44, effective July 1. **L. 2007:** Entire section amended, p. 1974, § 13, effective August 3.

Editor's note: (1) This section was contained in a part that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-4-1002 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this part. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-110 (6) as said section existed in 1979, the year prior to the first repeal and reenactment of this part.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

PART 12

PRESIDENTIAL PRIMARY ELECTIONS

1-4-1201 to 1-4-1208. (Repealed)

Source: **L. 2003:** Entire part repealed, p. 496, § 6, effective March 5.

Editor's note: This part was originally enacted by referendum in 1990. For amendments prior to its repeal, consult the red book table distributed with the session laws; the 1997 through 2002 Colorado Revised Statutes; and any annual supplements to the 1980 replacement volume prior to 1997.

PART 13

MINOR POLITICAL PARTIES

1-4-1301. Formation of minor political party. (1) A minor political party shall adopt a constitution or set of bylaws to govern its organization and the conduct of its affairs and shall exercise thereunder any power not inconsistent with the laws of this state. The constitution or set of bylaws shall be filed with the secretary of state. Any minor political party failing to file its constitution or set of bylaws pursuant to this section shall not be qualified as a minor political party. The constitution or set of bylaws shall contain the following:

(a) A method of nominating candidates for the partisan offices specified in section 1-4-1304 (1);

- (b) A method for calling and conducting assemblies and conventions;
- (c) A method for selecting delegates to assemblies and conventions;
- (d) A method for the selection of members and a chairperson to the state central committee and for the selection of other party officers;
- (e) A method for filling vacancies in party offices;
- (f) The powers and duties of party officers;
- (g) The structure of the state and county party organizations, if any;
- (h) A statement that any meeting to elect party officers, including delegates, and any assembly to nominate candidates, shall be held at a public place at the time specified by the party chairperson and that the time and place of such meeting shall be published once, no later than fifteen days before such meeting, in a newspaper of general circulation in each county wherein the members of the minor political party reside;
 - (i) A statement that the party chairperson or his or her designee shall be the person who shall communicate on behalf of the minor political party; and
 - (j) A method for amending the constitution or set of bylaws.
- (2) The chairperson of the party shall file any amendments to the constitution or set of bylaws with the secretary of state no later than fifteen days after the amendments are adopted.
- (3) The name of the minor political party shall contain no more than three words in addition to the word "party". The name of the minor political party shall not use, in whole or in part, the name of any existing political party.

Source: L. 98: Entire part added, p. 251, § 1, effective April 13. **L. 99:** (1)(h) and (2) amended, p. 769, § 34, effective May 20. **L. 2003:** (1)(b), (1)(c), and (1)(h) amended, p. 1311, § 9, effective April 22.

1-4-1302. Petition to qualify as a minor political party. (1) A petition to qualify as a minor political party shall be signed by at least ten thousand registered electors and shall be submitted to the secretary of state no later than March 1 of the election year for which the minor political party seeks to qualify.

(2) The petition shall contain the name of the minor political party, and the heading of the petition shall state that the signers thereof desire that it be qualified as a minor political party.

(3) Each registered elector signing a petition pursuant to this section shall print the elector's name and address, including the street and number, if any. There shall be attached to each petition an affidavit of a registered elector who circulated the petition stating:

- (a) The elector's address;
- (b) That the elector is a registered elector;
- (c) That the elector circulated the petition;
- (d) That each signature on the petition was affixed in the elector's presence and is the signature of the person whose name it purports to be; and
- (e) That, to the best of the elector's knowledge and belief, each of the persons signing the petition was a registered elector at the time of signing.

(4) (a) Upon filing, the secretary of state shall review all petition information and verify the information against the registration records. The secretary of state shall establish guidelines for verifying petition entries.

(b) No later than twenty-one days after receipt of the petition, the secretary of state shall notify the minor political party seeking to qualify of the number of valid signatures and whether the petition appears to be sufficient or insufficient.

(c) In case a petition to allow a minor political party to nominate candidates is not sufficient, it may be amended once at any time prior to 3 p.m. on the seventh day following the date of the notification of insufficiency. If such petition is amended prior to 3 p.m. on the seventh day following the notification of insufficiency, the secretary of state shall notify the minor political party of whether the petition is

sufficient or insufficient no later than the fourteenth day following the date of the notification of insufficiency.

(d) Upon determining that the petition is sufficient:

(I) The secretary of state shall notify the minor political party and the clerk and recorder of each county that such party is qualified; and

(II) Eligible electors shall be able to register as affiliated with such minor political party.

Source: L. 98: Entire part added, p. 252, § 1, effective April 13. **L. 99:** (4)(b) and (4)(c) amended, p. 769, § 35, effective May 20. **L. 2003:** (1), (2), and (4)(d)(I) amended, p. 1311, § 10, effective April 22.

1-4-1303. Qualifications to nominate by constitution or bylaws. (1) Subject to the provisions of subsection (2) of this section, a minor political party qualifies as a minor political party if the party satisfies the requirements of section 1-4-1302 or any one of the following conditions:

(a) Any of its candidates for any office voted on statewide in either of the last two preceding general elections received at least five percent of the total votes cast for such office.

(b) One thousand or more registered electors are affiliated with the minor political party prior to July 1 of the election year for which the minor political party seeks to nominate candidates.

(2) A minor political party shall continue to be qualified as a minor political party if:

(a) A candidate of the party for statewide office has received at least one percent of the total votes cast for any statewide office in either of the last two preceding general elections; or

(b) One thousand or more registered electors are affiliated with the minor political party prior to July 1 in either of the last two preceding general elections for which the party seeks to nominate candidates.

(3) (Deleted by amendment, L. 2003, p. 1312, § 11, effective April 22, 2003.)

Source: L. 98: Entire part added, p. 253, § 1, effective April 13. **L. 2003:** IP(1) and (3) amended, p. 1312, § 11, effective April 22.

1-4-1304. Nomination of candidates. (1) A minor political party may nominate candidates in accordance with sections 1-4-302, 1-4-402 (1) (a), 1-4-502 (1), and 1-4-802 and this article.

(1.5) (a) A minor political party may nominate candidates for offices to be filled at a general election by petition in accordance with section 1-4-802.

(b) (I) A minor political party may nominate candidates for offices to be filled at a general election by assembly. An assembly shall be held no later than sixty-five days preceding the primary election.

(II) Each candidate receiving thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office shall be designated by the assembly and certified pursuant to subsection (3) of this section.

(c) If an assembly designates more than one candidate for an office, or if an assembly designates one or more candidates and one or more candidates qualifies by petition, the candidate of the minor political party for that office shall be nominated at a primary election held in accordance with this code.

(d) If only one candidate is designated for an office by petition or assembly, that candidate shall be the candidate of the minor political party in the general election.

(e) Nothing in this section shall be construed to prevent any eligible elector associated with a political organization that does not qualify as a minor political party in an election from qualifying for the ballot by petition as an unaffiliated candidate under section 1-4-802.

(2) Nominations by a minor political party, to be valid, shall be made in accordance with the party's constitution or bylaws. No nomination under this section shall be valid for any general election held after January 1, 1999, unless the nominee:

(a) Is a registered elector;

(b) Has been affiliated for a period of twelve months immediately preceding the date of nomination with the minor political party that is making the nomination as shown in the registration books of the county clerk and recorder unless otherwise provided in the constitution or bylaws of the minor political party; and

(c) Has not been registered as a member of a major political party for at least twelve months prior to the date of nomination unless otherwise provided in the constitution or bylaws of the minor political party.

(3) Any minor political party nominating candidates in accordance with this part 13 shall file a certificate of designation with the designated election official no later than four days after the assembly was held at which the candidate was designated. The certificate of designation shall state the name of the office for which each person is a candidate and the candidate's name and address, the date on which the assembly was held at which the candidate was designated, shall designate in not more than three words the name of the minor political party that the candidate represents, and shall certify that the candidate is a member of the minor political party. The candidate's affiliation as shown on the registration books of the county clerk and recorder is prima facie evidence of party membership.

(4) Any person nominated in accordance with this part 13 shall file a written acceptance with the designated election official by mail, facsimile transmission, or hand delivery. The written acceptance must be postmarked or received by the designated election official no later than four business days after the filing of the certificate of designation required under subsection (3) of this section. If the acceptance is transmitted to the designated election official by facsimile transmission, the original acceptance must also be filed and postmarked no later than ten days after the filing of the certificate of designation required under subsection (3) of this section. If an acceptance is not filed within the specified time, the candidate shall be deemed to have declined the nomination.

(5) Nothing in this part 13 shall be construed to allow a minor political party to nominate more than one candidate for any one office.

Source: L. 98: Entire part added, p. 254, § 1, effective April 13. **L. 99:** IP(2), (3), and (4) amended, p. 769, § 36, effective May 20; (3) amended, p. 161, § 12, effective August 4. **L. 2001:** (3) amended, p. 1002, § 7, effective August 8. **L. 2003:** (1) and (3) amended and (1.5) added, p. 1312, § 12, effective April 22. **L. 2007:** (2)(b) and (2)(c) amended, p. 1974, § 14, effective August 3.

Editor's note: (1) Amendments to subsection (3) by Senate Bill 99-025 and House Bill 99-1152 were harmonized.

(2) Subsections (2)(b) and (2)(c) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-4-1305. Disqualification of minor political party. (1) In the event a minor political party ceases to qualify as such a party pursuant to section 1-4-1303 (2) and fails to subsequently qualify as such a party pursuant to section 1-4-1303, the secretary of state shall notify the chairperson of such party and the clerk and recorder of each county of such disqualification.

(2) Such notice of disqualification shall be provided by the secretary of state to the chairperson of the minor political party and to each clerk and recorder no later than July 1 of an election year in which a minor political party may qualify candidates for the ballot. No certificate of designation of candidates pursuant to section 1-4-1304 (3) shall be accepted by the secretary of state from the minor political party for the election for which such party has ceased to qualify.

(3) Upon notification of disqualification of a minor political party, each registered elector that is affiliated with such minor political party shall be designated on the registration books of the county clerk and recorder as "unaffiliated".

Source: L. 98: Entire part added, p. 255, § 1, effective April 13.

ARTICLE 5

Notice and Preparation for Elections

Editor's note: This article was numbered as article 12 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers that were relocated as a part of the repeal and reenactments are shown in editor's notes following each section.

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- 1-5-101. Establishing precincts and polling places for partisan elections.
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PART 2

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- 1-5-201. Notice of presidential primary election. (Repealed)
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- 1-5-401. Method of voting.
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PART 5

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- 1-5-501. Sufficient voting booths, voting machines, or electronic voting equipment.
- 1-5-502. Ballot boxes for nonmachine voting.
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- 1-5-505. Election expenses to be paid by county.
- 1-5-505.5. State reimbursement to counties for ballot measure elections.
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PART 6

AUTHORIZATION AND USE OF VOTING MACHINES AND ELECTRONIC VOTING SYSTEMS

- 1-5-601. Use of voting systems.
- 1-5-601.5. Compliance with federal requirements.

- 1-5-602. Requirements for voting machines - repeal. (Repealed)
- 1-5-603. Adoption and payment for voting machines.
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- 1-5-605. Other laws apply - paper ballots permitted for absentee voting - repeal. (Repealed)
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- 1-5-606. Election officials and employees not to have interest in voting equipment or devices.
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- 1-5-608.2. Punch card voting systems - prohibited.
- 1-5-608.5. Electronic and electromechanical voting systems - independent testing.
- 1-5-609. Acquisition and use authorized - repeal. (Repealed)
- 1-5-610. Preparation for use - electronic voting.
- 1-5-611. Requirements - nonpunch card electronic voting systems.
- 1-5-612. Use of electronic and electromechanical voting systems.
- 1-5-613. Purchase and sale of voting equipment.
- 1-5-614. Certification of electronic and electromechanical voting systems - standards.
- 1-5-615. Electronic and electromechanical voting systems - requirements.
- 1-5-616. Electronic and electromechanical voting systems - standards - procedures.
- 1-5-617. Examination - testing - certification.

1-5-618.	Modification of electronic and electromechanical voting systems - definitions.	1-5-701.	Legislative declaration - federal funds.
1-5-619.	Temporary use of electronic and electromechanical voting systems.	1-5-702.	Definitions.
1-5-620.	Electronic or electromechanical voting system information - software.	1-5-703.	Accessibility of polling places to persons with disabilities.
1-5-621.	Compliance - definitions.	1-5-704.	Standards for accessible voting systems.
		1-5-705.	Accessible voter interface devices - minimum requirement.

PART 8

PART 7

VOTER-VERIFIED PAPER RECORD

ACCESSIBILITY FOR ELECTORS WITH DISABILITIES

1-5-801.	Acquisition of voting systems - voter-verified paper record.
1-5-802.	Use of voting systems - voter-verified paper record.

PART 1

POLLING PLACES

Cross references: For early voters' polling place, see § 1-8-204.

1-5-101. Establishing precincts and polling places for partisan elections. (1) Subject to approval by the board of county commissioners, the county clerk and recorder of each county shall divide the county into as many election precincts for all general, primary, and congressional vacancy elections as is convenient for the eligible electors of the county and shall designate the place for each precinct at which elections are to be held. In establishing boundaries, the board of county commissioners shall take into consideration natural and artificial boundaries that meet the requirements of the United States bureau of the census. The precincts shall be numbered in accordance with section 1-5-101.5. Changes in the precinct boundaries of a county shall be made only within the district boundaries of each representative and senatorial district.

(2) In counties that use paper ballots, the county clerk and recorder, subject to approval by the board of county commissioners, shall establish at least one precinct for every six hundred active eligible electors, with boundaries that take into consideration municipal and school district boundary lines whenever possible. However, the county clerk and recorder, subject to approval by the board of county commissioners, may establish one precinct for every seven hundred fifty active eligible electors.

(3) In a county that uses an electronic or electromechanical voting system, the county clerk and recorder, subject to approval by the board of county commissioners, shall establish at least one precinct for every one thousand five hundred active eligible electors. However, the county clerk and recorder, subject to approval by the board, may establish one precinct for every two thousand active eligible electors.

(4) Repealed.

(5) In order to facilitate the preparation of a computerized data base for use in the reapportionment process that will take place after the decennial census in the year 2000, the county clerk and recorder of each county, subject to approval by the board of county commissioners, shall establish precinct boundaries which shall remain in effect until after the general election in 2000; except that the precincts so established may be subdivided within the boundaries of the original precinct. Such precincts shall be established no later than twenty-nine days prior to the precinct caucus day in 1998; except that,

in counties affected by the reapportionment plan required by *Sanchez v. State of Colorado*, 97 F.3d 1303 (10th Cir. 1996), such precincts shall be established within two weeks after the federal district court approves of such reapportionment plan. In establishing precinct boundaries pursuant to the provisions of this subsection (5), county clerk and recorders and boards of county commissioners shall to the extent reasonably possible utilize natural and man-made boundaries that meet the requirements for visible features adopted by the United States bureau of the census.

(6) A precinct containing no more than one hundred fifty electors may be designated as a mail-in polling precinct at the discretion of the election official for the precinct.

Source: **L. 92:** Entire article R&RE, p. 700, § 8, effective January 1, 1993. **L. 95:** Entire section amended, p. 835, § 45, effective July 1. **L. 97:** (5) added, p. 1056, § 2, effective May 27; (4) added, p. 5, § 1, effective August 6. **L. 98:** (6) added, p. 635, § 8, effective May 6. **L. 99:** (4) amended, p. 1389, § 7, effective June 4. **L. 2000:** (1) amended, p. 265, § 2, effective August 2. **L. 2004:** (4) repealed, p. 1104, § 2, effective May 27; (3) amended, p. 1343, § 4, effective May 28. **L. 2007:** (6) amended, p. 1778, § 12, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For transferring names of electors when precinct boundaries changed, see § 1-2-223; for the power of the board of county commissioners to form new precincts, change the names of precincts, or reduce the numbers of precincts, see § 30-11-114.

(2) For the legislative declaration contained in the 2004 act amending subsection (3), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 301-304.

C.J.S. See 29 C.J.S., Elections, § 73.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Judicial notice taken of boundaries of election precincts. Courts take judicial notice of matters of common knowledge in the community where they sit, such as the boundaries of election precincts. *Nat'l Optical Co. v. United States Fid. & Guar. Co.*, 77 Colo. 130, 235 P. 343 (1925); *Antlers Athletic Ass'n v. Hartung*, 85 Colo. 125, 274 P. 831 (1928); *Israel v. Wood*, 93 Colo. 500, 27 P.2d 1024 (1933).

And a court will take judicial notice of the fact that there has been a precinct established in a county, it not being material whether the precinct was

established upon proper petition or by virtue of authority so to do

under this section. *Bd. of Comm'rs v. People ex rel. McPherson*, 36 Colo. 246, 91 P. 36 (1906).

Whereupon a mandamus proceeding will be dismissed. When a court takes judicial notice that an election precinct has been established, a mandamus proceeding to compel the board of county commissioners to establish such precinct pending upon review in such court will be dismissed, there being no live question for determination. *Bd. of Comm'rs v. People ex rel. McPherson*, 36 Colo. 246, 91 P. 36 (1906).

Applied in *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982).

1-5-101.5. Precinct numbering. (1) There is hereby created a precinct numbering system that shall be used by the county clerk and recorder of each county of the state in numbering election precincts established in accordance with section 1-5-101. The precinct numbering system created pursuant to this section shall not be used until the reapportionment of senatorial and representative districts required to be conducted after the 2000 federal census pursuant to section 48 of article V of the Colorado constitution is completed, but the precinct numbering system shall be implemented by each county clerk and recorder no later than July 1, 2002.

(2) Any election precinct established pursuant to the provisions of section 1-5-101 shall be numbered with a ten digit number as follows:

(a) The first digit of the precinct number shall consist of the number of the congressional district in which the precinct is contained.

(b) The second and third digits of the precinct number shall consist of the number of the state senatorial district in which the precinct is contained. If the state senatorial district consists of one digit, such digit shall be preceded by a zero for purposes of the precinct number.

(c) The fourth and fifth digits of the precinct number shall consist of the number of the state representative district in which the precinct is contained. If the state representative district consists of one digit, such digit shall be preceded by a zero for purposes of the precinct number.

(c.5) The sixth and seventh digits of the precinct number shall consist of the number assigned by the secretary of state to represent the county in which the precinct is contained.

(d) The last three digits of the precinct number shall consist of an individual precinct number as determined by the county clerk and recorder.

(3) Any changes in election precinct numbering required pursuant to this section shall be completed and reported by the county clerk and recorder to the secretary of state in accordance with section 1-5-103 (3).

Source: L. 2000: Entire section added, p. 264, § 1, effective August 2. **L. 2001:** IP(2) amended and (2)(c.5) added, p. 1003, § 8, effective August 8.

1-5-102. Establishing precincts and polling places for nonpartisan elections. (1) For nonpartisan elections other than coordinated elections, no later than twenty-five days prior to the election, the designated election official, with the approval of the governing body with authority to call elections, shall divide the jurisdiction into as many election precincts as it deems expedient for the convenience of eligible electors of the jurisdiction and shall designate the polling place for each precinct. The election precincts shall consist of one or more whole general election precincts wherever practicable, and the designated election official and governing body shall cooperate with the county clerk and recorder and the board of county commissioners of their political subdivisions to accomplish this purpose. Wherever possible, the polling places shall be the same as those designated by the county for partisan elections.

(2) The county clerk and recorder, no later than one hundred twenty days prior to a regular special district election or regular election of any other political subdivision, shall prepare a map of the county showing the location of the polling places and precinct boundaries utilized in the last November election. Copies of the map shall be available for inspection at the office of the county clerk and recorder and for distribution to the designated election official of each political subdivision.

(3) The county clerk and recorder shall maintain a list of owners or contact persons who, to the clerk's knowledge, may grant permission to political subdivisions to use the locations identified on the map for polling places. The clerk shall, upon request of the designated election official of a political subdivision, provide a copy of the list, or a part of the list as requested by the designated election official.

Source: L. 92: Entire article R&RE, p. 700, § 8, effective January 1, 1993. **L. 94:** Entire section amended, p. 1155, § 19, effective July 1. **L. 95:** (1) amended, p. 836, § 46, effective July 1. **L. 96:** (1) amended, p. 1741, § 29, effective July 1. **L. 99:** (1) and (2) amended, p. 770, § 37, effective May 20.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 301-304.

C.J.S. See 29 C.J.S., Elections, §§ 73, 144.

1-5-102.5. Establishing polling places for coordinated elections. (1) No later than ninety days prior to a coordinated election, the county clerk and recorder, in consultation with the other designated election officials of each political subdivision participating in the election, shall assure that one polling place be designated to allow an individual elector to vote for all ballot issues, ballot questions, and candidates voted on the same date.

(2) Repealed.

Source: L. 93: Entire section added, p. 1408, § 40, effective July 1. **L. 98:** Entire section amended, p. 582, § 15, effective April 30. **L. 99:** (1) amended, p. 771, § 38, effective May 20. **L. 2004:** (2) repealed, p. 1104, § 3, effective May 27.

1-5-102.7. Combining precincts and polling places - vote centers. (1) Notwithstanding any provision of section 1-5-101, 1-5-102, or 1-5-102.5, a designated election official may combine polling places or precincts or establish one or more vote centers for any election, subject to approval by the board of county commissioners. A designated election official who combines polling places or precincts or establishes a vote center shall publish the location of polling places pursuant to section 1-5-205.

(2) If vote centers are used in an election in a political subdivision, precinct polling places shall not also be used in the election in that political subdivision, unless each precinct polling place has a secure electronic connection to provide voting information to and receive voting information from the computerized registration book maintained by the county clerk and recorder.

(3) If vote centers are used in a general election in a county with a population of twenty-five thousand or more active registered electors, there shall be at least one vote center for every ten thousand active registered electors; except that the secretary of state may waive this requirement for a county before the election at the request of the county clerk and recorder.

(4) Each vote center used in a county shall have a secure electronic connection to the computerized registration book maintained by the county clerk and recorder permitting all voting information processed by any computer at a vote center to be immediately accessible to all other computers at all vote centers in the county. A county may not use vote centers in an election unless the secretary of state has certified that the secure electronic connection is sufficient to prevent any elector from voting more than once and to prevent unauthorized access to the computerized registration book. The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., establishing requirements for the equipment used at a vote center, including but not limited to requirements to test and backup the equipment used for the secure electronic connection to the computerized registration book and requirements that a vote center have a noncomputerized copy of the registration book or a copy of the elector registration records stored electronically at the vote center to be used in case of a system failure.

(5) (a) The designated election official shall determine the number, location, and manner of operation of vote centers, including poll watching activities at vote centers, in consultation with the chairpersons of the county central committees of the major political parties and a representative of the county organization of any minor political party and after a public comment period of no less than fifteen days and a public hearing held in accordance with the rules adopted by the secretary of state pursuant to article 4 of title 24, C.R.S.

(b) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., establishing guidelines for the number, location, and manner of operation of vote centers. The guidelines shall address issues including, but not limited to, the number of computers with a secure connection to the computerized registration book, voting devices or machines, provisional ballots, and other supplies to be available at each vote center.

(6) Each vote center shall meet all the requirements of federal and state law applicable to polling places, except as such requirements of state law are modified by this section.

(7) The designated election official of a political subdivision shall not establish vote centers for a general election unless vote centers were used in a previous election held by the political subdivision in an odd-numbered year or in a primary election held on or after January 1, 2006.

(8) (a) In elections held before January 1, 2008, the election judges shall make one certificate for each vote center in the form required by section 1-7-601.

(b) In elections held on and after January 1, 2008, the use of vote centers in an election shall not affect the duty of the election judges to make a certificate for each precinct in accordance with section 1-7-601.

Source: **L. 2004:** Entire section added, p. 1105, § 4, effective May 27. **L. 2006:** (5) and (8) amended, p. 2031, § 9, effective June 6. **L. 2007:** (4) and (5)(b) amended, p. 1974, § 15, effective August 3.

Editor's note: Subsections (4) and (5)(b) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-5-103. Changes in boundaries - partisan elections. (1) (a) Changes in the boundaries of precincts or the creation of new precincts for partisan elections shall be completed no later than twenty-nine days prior to the precinct caucus day, except in cases of precinct changes resulting from changes in county boundaries.

(b) Repealed.

(2) Subject to approval by the board of county commissioners, the county clerk and recorder shall change any polling place upon a petition of a majority of the eligible electors residing within a precinct if the request is made at least ninety days prior to the primary election.

(3) All changes in precinct boundaries or numbering for partisan elections, including changes required pursuant to section 1-5-101.5, shall be reported within ten days by the county clerk and recorder to the secretary of state, and a corrected precinct map shall be transmitted to the secretary of state as soon as possible after the changes have been effected.

Source: **L. 92:** Entire article R&RE, p. 701, § 8, effective January 1, 1993. **L. 94:** (1) amended, p. 1769, § 26, effective January 1, 1995. **L. 95:** (1) amended, p. 836, § 47, effective July 1. **L. 99:** (1) amended, p. 771, § 39, effective May 20. **L. 2000:** (3) amended, p. 265, § 3, effective August 2. **L. 2002:** (1) amended, p. 134, § 5, effective March 27.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-101(2), (3) and (4) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2002. (See L. 2002, p. 134.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982).

1-5-104. Changes in boundaries - nonpartisan elections. (1) Changes in the boundaries of precincts or the creation of new precincts for nonpartisan elections shall be completed no later than twenty-five days prior to scheduled elections, except in cases of precinct changes resulting from changes in the jurisdiction's boundaries.

(2) All changes in precinct boundaries or numbering for nonpartisan elections shall be reported to the county clerk and recorder within ten days by the designated election official, and a corrected precinct map shall be transmitted to the county clerk and recorder as soon as possible after the changes have been effected.

(3) Each governing body shall change any polling place upon a petition of a majority of the eligible electors residing within a precinct if the request is made at least forty-five days prior to the next scheduled election and another polling place location is reasonably available.

(4) Except as provided by law, no polling place shall be changed after the twenty-fifth day prior to an election.

Source: L. 92: Entire article R&RE, p. 701, § 8, effective January 1, 1993. L. 93: (1) amended, p. 1408, § 41, effective July 1. L. 96: (1), (3), and (4) amended, p. 1742, § 30, effective July 1. L. 99: (1) amended, p. 771, § 40, effective May 20.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

1-5-105. Restrictions. (1) No election-related activity shall be conducted within one hundred feet of any building in which a polling place is located except that of the conduct of the election at the polling place.

(2) No polling place shall be located in a room in which any intoxicating malt, spirituous, or vinous liquors are being served.

(3) The polling places shall be in public locations wherever possible. A private location may be used only when no appropriate public location is available.

(4) For purposes of subsection (1) of this section and sections 1-6-119 and 1-13-714, when a polling place is within multi-use buildings such as a shopping mall or county office building, the "building" shall be considered the room in which ballots are cast, any waiting room or hall where electors wait to vote, as well as a primary corridor where electors walk to an interior polling place, and the designated exterior door to the multi-use building in which the polling place is located.

Source: L. 92: Entire article R&RE, p. 701, § 8, effective January 1, 1993. L. 93: (2) and (3) amended, p. 1408, § 42, effective July 1. L. 95: (4) added, p. 836, § 48, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-101 (5) and (6) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-106. Polling place - designation by sign. All polling places shall be designated by a sign conspicuously posted at least twelve days before each election. The sign shall be substantially in the following form: "Polling place for precinct no." The lettering on the sign and the precinct number shall be black on a white background. The letters and numerals of the title shall be at least four inches in height. In addition, the sign shall state the hours the polling place will be open.

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. L. 95: Entire section amended, p. 836, § 49, effective July 1. L. 2007: Entire section amended, p. 1975, § 16, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-201 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 301-304.

1-5-107. Polling places for disabled electors - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 2004:** (2) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-7-108 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-5-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-108. Election judges may change polling places. (1) If it becomes impossible or impracticable to hold an election because of an emergency at the designated polling place, the election judges, after assembling at or as near as practicable to the original designated polling place, may move to the nearest convenient place for holding the election and at the newly designated place forthwith proceed with the election. The election judges shall notify the designated election official of the change as soon as possible.

(2) Upon moving to a new polling place, the election judges shall display a proclamation of the change at the original polling place to notify all electors of the new location for holding the election. The proclamation shall contain a statement explaining the specific nature of the emergency that required the change in the polling place and shall provide the street address of the new location.

Source: L. 98: Entire section added, p. 583, § 16, effective April 30.

PART 2

CALL AND NOTICE

1-5-201. Notice of presidential primary election. (Repealed)

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 93:** Entire section repealed, p. 1409, § 43, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-4-1103 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-5-201.5. Legislative declaration - purpose. The general assembly declares that the purpose of this part 2 is to provide adequate notice of elections at a reasonable cost to the taxpayers of the state and its political subdivisions.

Source: L. 94: Entire section added, p. 1155, § 20, effective July 1.

1-5-202. Notice of presidential primary and primary election by secretary of state and county clerk and recorder. (Repealed)

Source: L. 92: Entire article R&RE, p. 702, § 8, effective January 1, 1993. **L. 93:** (1) and (2) amended, p. 1409, § 44, effective July 1. **L. 94:** Entire section amended, p. 1155, § 21, effective July 1. **L. 96:** (2) amended, p. 1742, § 31, effective July 1. **L. 99:** (1) and (2) amended, p. 771, § 41, effective May 20. **L. 2002:** Entire section repealed, p. 1642, § 39, effective June 7.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-6-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-15-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-203. Certification of ballot. (1) (a) No later than sixty days before any primary election, and no later than fifty-seven days before any general or odd-year November election or congressional vacancy election, the secretary of state shall deliver by electronic transmission and registered mail to the county clerk and recorder of each county a certificate in writing of the ballot order and content for each county, as follows:

(I) For general elections, the certificate shall specify the national and state officers and the district officers of state concern for whom some or all of the eligible electors of the county are entitled to cast ballots at the general election. The certificate shall include the name and party or other designation of each candidate for whom some or all of the eligible electors of the county are entitled to cast ballots and for whom a petition or certificate of nomination has been filed with the secretary of state, the name and party of each candidate nominated at the primary election for a national or state office or a district office of state concern, and the order of the ballot and the ballot content for the election. With regard to the election of members to the general assembly, the notice shall also specify the district number and the names of the members whose terms of office will expire.

(II) For primary elections, the certificate shall specify the offices for which nominations are to be made. The notice shall include a certified list of persons for whom certificates of designation or petitions have been filed with the secretary of state and the office for which each person is a candidate, together with the other details mentioned in the certificates of designation or petitions, and the order of the ballot for the primary election.

(III) For any election at which one or more ballot issues or ballot questions are to be submitted to the eligible electors of the entire state, the secretary of state shall certify the order of ballot and ballot content with respect to such ballot issues or ballot questions to the county clerk and recorder of each county of the state.

(b) The secretary of state shall be solely responsible for the accuracy of the information contained in the certificate.

(2) (Deleted by amendment, L. 2002, p. 1626, § 4, effective June 7, 2002.)

(3) (a) No later than sixty days before any election, the designated election official of each political subdivision that intends to conduct an election shall certify the order of the ballot and ballot content. Such certification shall be delivered to the county clerk and recorder of each county that has territory within the political subdivision if the election is coordinated with the clerk and recorder. The order of the ballot and ballot content shall include the name and office of each candidate for whom a petition has been filed with the designated election official and any ballot issues or ballot questions to be submitted to the eligible electors.

(b) (Deleted by amendment, L. 2002, p. 1626, § 4, effective June 7, 2002.)

(c) The state or a political subdivision that issues a certificate pursuant to this subsection (3) shall be solely responsible for the accuracy of the information contained in the certificate. Any error that can be corrected pursuant to the provisions of section 1-5-412 shall be corrected at the expense of the political subdivision whose designated election official issued the defective certificate or, at the expense of the state, if the secretary of state issued the defective certificate.

Source: L. 92: Entire article R&RE, p. 703, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1409, § 45, effective July 1. **L. 94:** Entire section amended, p. 1156, § 22, effective July 1. **L. 99:** Entire section amended, p. 772, § 42, effective May 20. **L. 2002:** (1), (2), (3)(a), and (3)(b) amended, p. 1626, § 4, effective June 7. **L. 2003:** IP(1) amended, p. 495, § 2, effective March 5. **L. 2005:** IP(1) and (3)(a) amended, p. 1402, § 21, effective June 6; IP(1) and (3)(a) amended, p. 1437, § 21, effective June 6. **L. 2006:** (1) amended, p. 1487, § 1, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-101 and 1-4-102 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-204. Call for nominations for nonpartisan elections. (Repealed)

Source: L. 92: Entire article R&RE, p. 703, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1409, § 46, effective July 1. **L. 94:** Entire section amended, p. 1157, § 23, effective July 1. **L. 96:** Entire section repealed, p. 1742, § 32, effective July 1.

1-5-205. Published and posted notice of election. (1) The designated election official, or the coordinated election official if so provided by an intergovernmental agreement, no later than ten days before each election, shall provide notice by publication of the election as described by section 1-1-104 (34), which notice shall state, as applicable for the particular election for which notice is provided, the following:

- (a) The date of the election;
- (b) The hours during which the polls will be open on election day and for early voting;
- (c) The address of the walk-in location and hours during which the walk-in location for the delivery of mail ballots and receipt of replacement ballots will be open;
- (d) The address of the location for application and the return of mail-in ballots and the hours during which the office will be open;
- (e) The complete ballot content.
- (f) to (i) (Deleted by amendment, L. 2002, p. 1627, § 5, effective June 7, 2002.)
- (1.2) (Deleted by amendment, L. 2002, p. 1627, § 5, effective June 7, 2002.)
- (1.3) A copy of the notice required by this section shall be posted at least ten days prior to the election and until two days after the election in a conspicuous place in the office of the designated election official or the clerk and recorder if the election is coordinated by the clerk and recorder. Sample ballots may be used as notices so long as the information required by this section is included with the sample ballot.

(1.4) Publication of the notice required by subsection (1) of this section by the clerk and recorder for a coordinated election shall satisfy the publication requirement for all political subdivisions participating in the coordinated election.

(1.5) (Deleted by amendment, L. 2002, p. 1627, § 5, effective June 7, 2002.)

(2) At the time that notice by publication is made, the designated election official shall also mail a copy of the notice of the election to the county clerk and recorders of the counties in which the political subdivision is located if the clerk and recorder is not the coordinated election official.

(3) When there is a vacancy for an unexpired term in any national or state office or a district office of state concern that is by law to be filled at any general or congressional vacancy election, the secretary of state, no later than fifty-five days prior to the election, shall give notice in writing by publishing a notice in at least one newspaper of general circulation in the state or in the congressional district in which the vacancy is to be filled. The notice shall specify the office in which the vacancy exists, the cause of the vacancy, the name of the officer in whose office it has occurred, and the time when the term of office will expire.

Source: L. 92: Entire article R&RE, p. 704, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1410, § 47, effective July 1. **L. 94:** Entire section amended, p. 1157, § 24, effective July 1. **L. 96:** IP(1), (1)(h), and (1)(i) amended and

(1.2) added, p. 1743, § 33, effective July 1. **L. 99:** IP(1) and (1.5) amended, p. 773, § 43, effective May 20. **L. 2000:** (1)(g) amended, p. 299, § 7, effective August 2. **L. 2002:** Entire section amended, p. 1627, § 5, effective June 7. **L. 2007:** (1)(d) amended, p. 1778, § 13, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-202 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-102 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the correction of errors in publication, see § 1-5-412.

ANNOTATION

- I. General Consideration.
- II. Notice by Secretary of State.
- III. Notice by County Clerk and Recorder.
 - A. In General.
 - B. Published in Newspapers.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 275-278.

C.J.S. See 29 C.J.S., Elections, § 136.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. NOTICE BY SECRETARY OF STATE.

In case of the election of officers for the executive or judicial department, the secretary of state is bound to give 30 days' notice of it, and in the case of a vacancy which is to be filled at the election, he must likewise give 30 days' notice. *People ex rel. Dix v. Kerwin*, 10 Colo. App. 472, 51 P. 530 (1897).

III. NOTICE BY COUNTY CLERK AND RECORDER.

- A. In General.

The requirement that notice be published and posted for 10 days before the election is specific, precise and definite. *People ex rel. Dix v. Kerwin*, 10 Colo. App. 472, 51 P. 530 (1897).

The theory of elections is that there shall be due notice given to the voters, and that they must be advised either by a direct notice published by the clerk or by proceedings taken by the voters and the people generally in such way as that it may be fairly inferred that it was generally and thoroughly well understood that a particular office was to be filled at the election, so that the voters should act understandingly and intelligently in casting their ballots. *People ex rel. Dix v. Kerwin*, 10 Colo. App. 472, 51 P. 530 (1897).

Election conducted without notice held to be invalid. *People ex rel. Dix v. Kerwin*, 10 Colo. App. 472, 51 P. 530 (1897).

But under some circumstances an election may be valid notwithstanding lack of notice. See *People ex rel. Dix v. Kerwin*, 10 Colo. App. 472, 51 P. 530 (1897).

For the notice requirement is not necessarily under all circumstances and at all times so far mandatory that a failure to observe it will defeat an election otherwise regularly held. *People ex rel. Dix v. Kerwin*, 10 Colo. App. 472, 51 P. 530 (1897).

- B. Published in Newspapers.

The notice requirement is clearly intended for the benefit of the public, not the newspapers. *People ex rel. Lamar Publ'g Co. v. Hoag*, 54 Colo. 452, 131 P. 400 (1913).

The purpose of requiring that legal notices be published in newspapers of general circulation is not to benefit the papers but to insure that the public is aware of matters of legal importance. *Resident Participation of Denver, Inc. v. Love*, 322 F. Supp. 1100 (D. Colo. 1971).

And since the duty imposed by the notice requirement is a public one, its breach does not constitute a private wrong for which a publisher can recover in an individual action. *People ex rel. Lamar Publ'g Co. v. Hoag*, 54 Colo. 542, 131 P. 400 (1913).

However, a printer who follows the statutory requirements as to printing the nomination list cannot be denied compensation for such printing by reason of his purported nonobservance of the clerk's directions to print in another form. *Bd. of Comm'rs v. Frederick*, 50 Colo. 464, 115 P. 514 (1911).

And for publishing the nomination list, publishers are entitled to the reasonable value of the work, as § 24-70-107, providing for fees for publication of legal notices, does not apply. *Bd. of Comm'rs v. Price*, 10 Colo. App. 519, 51 P. 1011 (1898).

And a contract of the publisher of a newspaper for the legal printing for a county may be so framed as to include the printing of such lists, in case the clerk should select such newspaper for its publication. *Bd. of Comm'rs v. Frederick*, 50 Colo. 464, 115 P. 514 (1911).

But the publication of the list of nominations is county printing. *Bd. of Comm'rs v. Frederick*, 50 Colo. 464, 115 P. 514 (1911).

But inasmuch as the clerk is to select the newspaper in which the list is to be published, a contract

in general terms to do the "county legal printing", at a specified rate, does not include the publication of such

lists. *Bd. of Comm'rs v. Frederick*, 50 Colo. 464, 115 P. 514 (1911).

1-5-206. Postcard notice. (1) (a) No later than twenty-five days before the general election or a special legislative election, the county clerk and recorder shall mail a voter information card concerning the general election or special legislative election to all active eligible electors of the county.

(b) As used in this section, unless the context otherwise requires, "voter information card" means written communication in the form of a card or letter that is mailed to the elector's address of record, unless the elector has requested that such communication be sent to the elector's deliverable mailing address pursuant to section 1-2-204 (2) (k), and shall contain the eligible elector's name and address, precinct number, polling location for the election, a returnable portion that allows the elector to request designation as a permanent mail-in voter pursuant to section 1-8-104.5, and any other information the designated election official deems applicable.

(2) (a) No later than fifteen days before a nonpartisan election and in addition to the publication required by section 1-5-205, the designated election official or coordinated election official may mail to each household where one or more active eligible electors reside a voter information card. The information on the voter information card may be included with the ballot issue notice.

(a.5) and (b) (Deleted by amendment, L. 2002, p. 1629, § 6, effective June 7, 2002.)

(3) and (4) (Deleted by amendment, L. 94, p. 1158, § 25, effective July 1, 1994.)

Source: L. 92: Entire article R&RE, p. 704, § 8, effective January 1, 1993. L. 93: (2)(a) amended, p. 1766, § 5, effective June 6; (1) and (2)(a) amended and (4) added, p. 1410, § 48, effective July 1. L. 94: Entire section amended, p. 1158, § 25, effective July 1; (1) amended, p. 1769, § 27, effective January 1, 1995. L. 95: (1) amended, p. 837, § 50, effective July 1. L. 97: (1) amended, p. 477, § 19, effective July 1. L. 99: (2)(a) amended, p. 773, § 44, effective May 20; (1) amended, p. 1389, § 8, effective June 4; (1) amended, p. 279, § 5, effective August 4. L. 2000: (1) and (2) amended, p. 1084, § 1, effective August 2. L. 2002: (1)(b) and (2) amended, p. 1629, § 6, effective June 7. L. 2007: (1)(b) amended, p. 1778, § 14, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-2-222 (1)(a) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (2)(a) was amended in House Bill 93-1342. Those amendments were superseded by the amendment of subsection (2)(a) in House Bill 93-1255.

(3) Amendments to this section by House Bill 94-1286 and House Bill 94-1294 were harmonized.

(4) Amendments to subsection (1) by House Bill 99-1082 and House Bill 99-1097 were harmonized.

1-5-206.5. Ballot issue notice. (Repealed)

Source: L. 94: Entire section added, p. 1159, § 26, effective July 1. L. 96: Entire section repealed, p. 1775, § 84, effective July 1.

1-5-206.7. Failure to receive mailed notice. Any election for which a notice was mailed shall not be invalidated on the grounds that an eligible elector did not receive the ballot issue notice, mailed information, or mailed notification of the election required by this code or the state constitution if the designated election official or coordinated election official acted in good faith in making the mailing. Good faith is presumed if the designated election official or coordinated election official mailed the ballot issue notice, information, or notification to the addresses appearing on a registration list for the political subdivision as provided by the county clerk and recorder, and, where applicable, the list of property owners provided by the county assessor.

Source: L. 94: Entire section added, p. 1159, § 26, effective July 1.

1-5-207. Court-ordered elections. (1) When an election is ordered by the court for a special district, the court shall authorize the designated election official to give notice as provided in the order.

(2) For an organizational election, the notice by publication shall include the purposes of the election, the estimated operating and debt service mill levies and fiscal year spending for the first year following organization, and the boundaries of the special district. The notice by publication shall recite the election date, which shall be not less than ten days after publication of the election notice.

(3) For a dissolution election, the notice by publication shall include the plan for dissolution or a summary of the plan and the place where a member of the public may inspect or obtain a copy of the complete plan. The notice by publication shall recite the election date, which shall be not less than ten days after publication of the election notice.

Source: L. 92: Entire article R&RE, p. 705, § 8, effective January 1, 1993. **L. 94:** Entire section amended, p. 1160, § 27, effective July 1.

1-5-208. Election may be canceled - when. (1) Except as provided in subsection (1.5) of this section, if the only matter before the electors is the election of persons to office and if, at the close of business on the thirtieth day before the election, there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.

(1.5) If the only matter before the electors in a nonpartisan election is the election of persons to office and if, at the close of business on the sixty-third day before the election, there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.

(2) Except for initiative and recall elections, no later than twenty-five days before an election conducted as a coordinated election in November, and at any time prior to any other elections, a governing body may by resolution withdraw one or more ballot issues or ballot questions from the ballot. The ballot issues and ballot questions shall be deemed to have not been submitted and votes cast on the ballot issues and ballot questions shall either not be counted or shall be deemed invalid by action of the governing body.

(3) If the electors are to consider the election of persons to office and ballot issues or ballot questions, the election may be canceled by the governing body only in the event that all of the conditions of subsection (1) of this section exist and that all ballot issues or ballot questions have been withdrawn from the ballot pursuant to subsection (2) of this section.

(4) Except as provided in subsection (2) of this section, no election may be canceled in part.

(5) Unless otherwise provided by an intergovernmental agreement pursuant to section 1-7-116, upon receipt of an invoice, the governing body shall within thirty days promptly pay all costs accrued by the county clerk and recorder and any coordinating political subdivision attributable to the canceled election or withdrawn ballot issues or ballot questions.

(6) The governing body shall provide notice by publication of the cancellation of the election. A copy of the notice shall be posted at each polling place of the political subdivision, in the office of the designated election official, and in the office of the clerk and recorder for each county in which the political subdivision is located and, for special districts, a copy of the notice shall be filed in the office of the division of local government. The governing body shall also notify the candidates that the election was canceled and that they were elected by acclamation.

Source: L. 92: Entire article R&RE, p. 705, § 8, effective January 1, 1993. **L. 94:** Entire section amended, p. 1160, § 28, effective July 1; entire section amended, p. 1769, § 28, effective January 1, 1995. **L. 95:** (1) and (6) amended, p. 837, § 51, effective July 1. **L. 96:** (1) amended and (1.5) added, p. 1743, § 34, effective July 1. **L. 2000:** (2), (3), (4), and (5) amended, p. 790, § 1, effective August 2.

Editor's note: Amendments to this section in House Bill 94-1286 and House Bill 94-1294 were harmonized.

PART 3

REGISTRATION BOOKS

1-5-301. Registration record for partisan elections. (1) The original registration records shall be retained in the office of the county clerk and recorder and may be provided for use by election judges at precinct polling places in primary, general, and congressional vacancy elections.

(2) The designated election official, at least one day prior to any election, shall cause the registration records and all necessary registration supplies to be delivered to the supply judge. The registration records shall be delivered in a sealed envelope or container to the supply judge, who shall have custody of and shall give a receipt for the registration records.

Source: L. 92: Entire article R&RE, p. 706, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-301 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-205 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308.

C.J.S. See 29 C.J.S., Elections, § 67.

1-5-302. Computer lists may be used in lieu of original registration records. For the purposes of all elections, the county clerk and recorder may substitute and supply computer lists of registered electors within the political subdivision for the original registration record. Following a primary, general, or congressional vacancy election, the county clerk and recorder shall record the date of election and, if a primary election, the party ballot received on the registered elector's original registration record retained and stored as provided in section 1-1-104 (36).

Source: L. 92: Entire article R&RE, p. 706, § 8, effective January 1, 1993. **L. 95:** Entire section amended, p. 837, § 52, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-302 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-214 (2) and (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-303. Registration records for nonpartisan elections. (1) No later than the fortieth day preceding the date of the scheduled nonpartisan election, the designated election official shall order the registration records. The designated election official may order a complete list of the registered electors as of the thirtieth day prior to the election with a supplementary list provided on the twentieth day, or the designated election official may order a complete list as of the twentieth day prior to the election. The county clerk and recorder shall certify and make available a complete copy of the list of the registered electors of each general election precinct that is located within the county and is involved in the election and, if the supplemental list is ordered no later than the twentieth day preceding the election, shall certify

and make available a supplemental list of the eligible electors who have become eligible since the earlier list was certified. These lists shall substitute for the original registration record.

(2) The registration list for each election precinct that is certified thirty days before the election shall contain the names and addresses of all registered electors residing within the precinct at the close of business on the fortieth day preceding the election. The registration list for each election precinct that is certified no later than twenty days before the election shall contain the names and addresses of all eligible electors residing within the precinct at the close of business on the thirtieth day prior to the election. If a supplemental list is ordered, it shall contain the names and addresses of all eligible electors who have become eligible within the period since the initial registration list was certified through the close of business on the thirtieth day preceding the election.

(3) Costs for the lists shall be assessed by the county clerk and recorder and paid by the political subdivision holding the election. The fee for furnishing the lists shall be no less than twenty-five dollars for the entire list nor more than one cent for each name contained on the registration list, whichever is greater.

(4) The order for the list may be canceled if the election is canceled pursuant to section 1-5-208 and the county clerk and recorder has not already prepared the list.

Source: L. 92: Entire article R&RE, p. 706, § 8, effective January 1, 1993. L. 95: (1) and (2) amended, p. 838, § 53, effective July 1.

1-5-304. Lists of property owners. (1) For elections where owning property in the political subdivision is a requirement for voting in the election, no later than the fortieth day preceding the date of the election, the designated election official, in addition to using the affidavit prescribed in section 32-1-806, C.R.S., shall order the list of property owners from the county assessor. Except as otherwise required under subsection (2) of this section, the county assessor shall certify and deliver an initial list of all recorded owners of taxable real and personal property within the political subdivision no later than thirty days before the election. The supplemental list for the political subdivision shall be provided no later than twenty days before the election and shall contain the names and addresses of all recorded owners who have become owners no later than thirty days prior to the election and after the initial list of property owners was provided. The cost for the lists shall be assessed by the county assessors and paid by the political subdivision holding the election. The fee for furnishing the lists shall be no less than twenty-five dollars for both lists nor more than one cent for each name contained on the lists, whichever is greater.

(2) The designated election official of a special district may order the list described in subsection (1) of this section of all recorded owners of taxable real and personal property within the special district as of the thirtieth day before the election with a supplementary list to be provided on the twentieth day before the election, or the designated election official may order a complete list as of the twentieth day before the election.

Source: L. 92: Entire article R&RE, p. 707, § 8, effective January 1, 1993. L. 93: Entire section amended, p. 1411, § 49, effective July 1. L. 94: Entire section amended, p. 1161, § 29, effective July 1. L. 99: Entire section amended, p. 773, § 45, effective May 20; entire section amended, p. 451, § 6, effective August 4.

Editor's note: Amendments to this section by Senate Bill 99-025 and House Bill 99-1268 were harmonized.

PART 4

BALLOTS

1-5-401. Method of voting. The method of voting for all elections may be by paper ballots or by electronic or electromechanical voting systems.

Source: L. 92: Entire article R&RE, p. 707, § 8, effective January 1, 1993. **L. 2004:** Entire section amended, p. 1343, § 5, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-401 (1) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-102 (1) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-402. Primary election ballots. (1) No later than thirty-two days before the primary election, the county clerk and recorder shall prepare a separate ballot for each political party. The ballots shall be printed in the following manner:

(a) All official ballots shall be printed according to the provisions of sections 1-5-407 and 1-5-408; except that across the top of each ballot shall be printed the name of the political party for which the ballot is to be used.

(b) The positions on the ballot shall be arranged as follows: First, candidates for United States senator; next, congressional candidates; next, state candidates; next, legislative candidates; next, district attorney candidates; next, other candidates for district offices greater than a county office; next, candidates for county commissioners; next, county clerk and recorder candidates; next, county treasurer candidates; next, county assessor candidates; next, county sheriff candidates; next, county surveyor candidates; and next, county coroner candidates. When other offices are to be filled at the coming general election, the county clerk and recorder, in preparing the primary ballot, shall use substantially the form prescribed by this section, stating the proper designation of the office and placing the names of the candidates for the office under the name of the office.

Source: L. 92: Entire article R&RE, p. 707, § 8, effective January 1, 1993. **L. 93:** (1)(a) amended, p. 1766, § 6, effective June 6. **L. 99:** IP(1) amended, p. 774, § 46, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-401(2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For order of names on a primary ballot, see § 1-4-103; for designation of candidates by party assembly, see § 1-4-601; for designation of party candidates by petition, see § 1-4-603; for conduct of primary elections, see part 2 of article 7 of this title.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 237, 281, 282.

C.J.S. See 29 C.J.S., Elections, §§ 217, 218.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ineligible candidate's name removed from ballot by best means available. In a contest involving the eligibility of a party designee in a primary election, where the party is found to be ineligible, is not error for a trial court to order such person's name eliminated from the ballot by the best means available, rather than requiring

reprinting of the ballots, or to direct the county clerks not to certify absentee ballots already cast for the ineligible candidate. *Anderson v. Kilmer*, 134 Colo. 270, 302 P.2d 185 (1956).

And ordering that the name of an ineligible candidate be stricken from the ballots by blocking out, by printing, or by striking out with a colored pencil is not in violation of the provision that there shall be no other printing or distinguishing marks on the ballot except as specifically provided. *Anderson v. Kilmer*, 134 Colo. 270, 302 P.2d 185 (1956).

1-5-403. Content of ballots for general and congressional vacancy elections. (1) The county clerk and recorder of each county using paper ballots or electronically counted ballot cards shall provide printed ballots for every odd-numbered year, general, or congressional vacancy election. The official

ballots shall be printed and in the possession of the county clerk and recorder no later than thirty-two days before every odd-numbered year, congressional vacancy, and general election.

(2) For all elections except those for presidential electors, every ballot shall contain the names of all candidates for offices to be voted for at that election whose nominations have been made and accepted, except those who have died or withdrawn, and the ballot shall contain no other names. When presidential electors are to be elected, their names shall not be printed on the ballot, but the names of the candidates of the respective political parties or political organizations for president and vice president of the United States shall be printed together in pairs under the title "presidential electors". The pairs shall be arranged in the alphabetical order of the names of the candidates for president in the manner provided for in section 1-5-404. A vote for any pair of candidates is a vote for the duly nominated presidential electors of the political party or political organization by which the pair of candidates were named.

(3) The names of joint candidates of a political party or political organization for the offices of governor and lieutenant governor shall be printed in pairs. The pairs shall be arranged in the alphabetical order of the names of candidates for governor in the manner provided for in section 1-5-404. A vote for any pair of candidates for governor and lieutenant governor is a vote for each of the candidates who compose that pair.

(4) The name of each person nominated shall be printed or written upon the ballot in only one place. Opposite the name of each person nominated, including candidates for president and vice president and joint candidates for governor and lieutenant governor, shall be the name of the political party or political organization which nominated the candidate, expressed in not more than three words. Those three words may not promote the candidate or constitute a campaign promise.

(5) The positions on the ballot shall be arranged as follows: First, candidates for president and vice president of the United States; next, candidates for United States senator; next, congressional candidates; next, joint candidates for the offices of governor and lieutenant governor; next, other state candidates; next, legislative candidates; next, district attorney candidates; next, candidates for the board of directors of the regional transportation district; next, other candidates for district offices greater than a county office; next, candidates for county commissioners; next, county clerk and recorder candidates; next, county treasurer candidates; next, county assessor candidates; next, county sheriff candidates; next, county surveyor candidates; and next, county coroner candidates. When other offices are to be filled, the county clerk and recorder, in preparing the ballot, shall use substantially the form prescribed by this section, stating the proper designation of the office and placing the names of the candidates for the office under the name of the office. The ballot issues concerning the retention in office of justices of the supreme court, judges of the court of appeals, judges of the district court, and judges of the county court shall be placed on the ballot in that order and shall precede the placement of ballot issues concerning amendment of the state constitution or pertaining to political subdivisions.

Source: L. 92: Entire article R&RE, p. 708, § 8, effective January 1, 1993. L. 97: (1) amended, p. 184, § 1, effective August 6. L. 99: (1) amended, p. 774, § 47, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-402 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For provision requiring joint election of governor and lieutenant governor, see § 1-4-204; for requirement that write-in candidate file affidavit of intent, see § 1-4-1101; for ballots for primary elections, see § 1-5-402; for printing and distribution of ballots, see § 1-5-410; for the furnishing of cards of instruction to election judges, see § 1-5-504; for the manner of voting in precincts which use paper ballots, see § 1-7-304; for ballots defectively marked, see § 1-7-309.

ANNOTATION

- I. General Consideration.
- II. Use of Paper Ballots.
- III. Name to be Printed in One Place.
- IV. Ballots to Allow Cross Marks.
- V. Spaces for Write-ins.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 281, 282.

C.J.S. See 29 C.J.S., Elections, §§ 182, 183, 262, 266.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

All provisions for the form of ballots are mandatory in the sense that they impose a duty upon those who come within their terms. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

It does not follow, however, that an election should be invalidated because of every departure on the part of public officers from the ballot arrangement requirements. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

Rather, a ballot should be admitted if the spirit and intention of the requirements are not violated, even though the ballot is not literally in accordance with them; for, unless a statute declares that a strict compliance with its requirements by the voters is essential to have their ballots counted, courts will not undertake to disfranchise them if, in the attempted exercise of their right, there is manifestly an effort to comply in good faith with the statutory requirements. *Kellogg v. Hickman*, 12 Colo. 256, 21 P. 325 (1888); *Young v. Simpson*, 21 Colo. 460, 42 P. 666 (1895); *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

II. USE OF PAPER BALLOTS.

The legislative intent in prescribing the form, size, color of paper, etc., of ballots to be used by voters is to guard the secrecy of the ballot and secure to the voter the right of suffrage, free of restraint. *Kellogg v. Hickman*, 12 Colo. 256, 21 P. 325 (1888).

Thus, a ballot is not illegal merely because printed differently. After a ballot has been voted, received, and counted, courts are not authorized, in the absence of constitutional restrictions as to the manner of exercising the right of suffrage, in declaring such ballot illegal merely because printed on paper of different quality, color, or dimension from that prescribed. *Kellogg v. Hickman*, 12 Colo. 256, 21 P. 325 (1888).

Furthermore, objection to irregularities in printing of ballots is too late after the vote. When public officers are entrusted with the preparation of ballots and

ample provision is made for the correction of errors before an election, it is too late after they have been voted, as a general rule, to interpose objections to the ballots for mere irregularities in the printing thereof. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

And it cannot be held that a printer may not recover because of a disregard of the prescribed ballot arrangement, or for a supposed nonobservance of the directions of the clerk, where, as matter of fact, the ballot list was published in the form contemplated, or at least permitted, by statutory requirements. *Bd. of Comm'rs v. Frederick*, 50 Colo. 464, 115 P. 514 (1911).

But opposing candidate with notice of emblem mistake cannot lie by and allow voters to be misled. If the county clerk makes a mistake in designating a candidate on the ballot as the nominee of a political party represented by an emblem, and the opposing candidate having notice of such mistake in time to have the mistake corrected, he will not be permitted to lie by and allow voters to be misled thereby and afterwards take advantage of such defect to defeat the expressed will of a majority of the voters. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892); *Dickinson v. Freed*, 25 Colo. 302, 55 P. 812 (1898).

III. NAME TO BE PRINTED IN ONE PLACE.

The ballot arrangement requirements do not attempt to restrict the right of selecting an emblem to any particular kind, or class, of political parties. *Schafer v. Whipple*, 25 Colo. 400, 55 P. 180 (1898).

But separate column for political designations required. While the ballot arrangement requirements do not in specific terms provide for a separate column for political designations, a fair interpretation or construction thereof so requires, since opposite the name of each candidate must be added the party name, and this, in some cases at least, might not be done without double columns. *Bd. of Comm'rs v. Frederick*, 50 Colo. 464, 115 P. 514 (1911).

IV. BALLOTS TO ALLOW CROSS MARKS.

Voter must express his choice by making an "X" opposite name of candidate. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

V. SPACES FOR WRITE-INS.

Voters must make cross mark when they write in more than one name. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

1-5-404. Arrangement of names on ballots for partisan elections. (1) In all partisan elections, the names of all candidates and joint candidates who have been duly nominated for office shall be arranged on the ballot under the designation of the office in three groups as follows:

(a) The names of the candidates of the two major political parties shall be placed on the general election ballot in an order established by lot and shall comprise the first group; except that the joint candidates for president and vice president and the joint candidates for governor and lieutenant governor shall be arranged in the alphabetical order of the names of the candidates for president and governor.

(b) The names of the candidates and joint candidates of the minor political parties shall be listed in an order established by lot and shall comprise the second group; except that the joint candidates for president and vice president and the joint candidates for governor and lieutenant governor shall be arranged in the alphabetical order of the names of the candidates for president and governor.

(c) The names of the candidates and joint candidates of the remaining political organizations shall be listed in an order established by lot and shall comprise the third group; except that the joint candidates for president and vice president and the joint candidates for governor and lieutenant governor shall be arranged in the alphabetical order of the names of the candidates for president and governor.

(2) Between July 1 and July 15 of each election year, the officer in receipt of the original designation, nomination, or petition of each candidate shall inform the two major political parties, each minor political party, and the representative of each political organization on file with the secretary of state of the time and place of the lot-drawing for offices to appear on the general election ballot. Ballot positions shall be assigned to the major political party, minor political party, or political organization in the order in which they are drawn. The name of the candidate shall be inserted on the ballot prior to the ballot certification.

(3) The arrangement of names on ballots for congressional vacancy elections shall be established by lot at any time prior to the certification of ballots for the congressional vacancy election. The officer in receipt of the original designation, nomination, or petition of each candidate shall inform the two major political parties, each minor political party, and the representatives of each political organization on file with the secretary of state of the time and place of the lot-drawing for the congressional election ballot. Ballot positions shall be assigned to the major political party, minor political party, or political organization in the order in which they are drawn.

Source: L. 92: Entire article R&RE, p. 710, § 8, effective January 1, 1993. L. 93: (1) and (3) amended, p. 1411, § 50, effective July 1. L. 98: Entire section amended, p. 258, § 11, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-403 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-208 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 283-297.

C.J.S. See 29 C.J.S., Elections, §§ 269-273.

No constitutionally cognizable classification scheme is employed by the state in applying this section. This section is facially neutral and neither excludes minority parties from the ballot nor prevents them from

attaining major political party status. *Libertarian Party of Colo. v. Buckley*, 938 F. Supp. 687 (D. Colo. 1996).

Subsection (1) does not offend the equal protection clause nor infringe on individual plaintiffs' voting rights under the first amendment of the U.S. Constitution. *Libertarian Party of Colo. v. Buckley*, 8 F. Supp.2d 1244 (D. Colo. 1998).

1-5-405. Arrangement of names on voting machines - testing of machines - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 710, § 8, effective January 1, 1993. **L. 93:** Entire section R&RE, p. 1412, § 51, effective July 1. **L. 2004:** (4) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-6-404 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-6-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (4) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp.1361, 1213.)

1-5-406. Content of ballots for nonpartisan elections. The designated election official shall provide printed ballots for every election. The official ballots shall be printed and in the possession of the designated election official at least thirty days before the election. Every ballot shall contain the names of all duly nominated candidates for offices to be voted for at that election, except those who have died or withdrawn, and the ballot shall contain no other names. The arrangement of the names shall be established by lot at any time prior to the certification of the ballot. The designated election official shall notify the candidates of the time and place of the lot-drawing for the ballot. The drawing shall be performed by the designated election official or a designee. The names shall be printed on the ballot without political party designation.

Source: L. 92: Entire article R&RE, p. 712, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1412, § 52, effective July 1.

1-5-407. Form of ballots. (1) Except as provided in subsections (1.5) and (1.6) of this section, the extreme top part of each ballot may be divided into two spaces by two perforated or dotted lines. Each space shall be not less than one inch wide. The top portion is called the stub, and the next portion is called the duplicate stub. The same number shall be printed upon both the stub and the duplicate stub. All ballots shall be numbered consecutively. All ballots shall be uniform and of sufficient length and width to allow for the names of candidates, officers, ballot issues, and ballot questions to be printed in clear, plain type, with a space of at least one-half inch between the different columns on the ballot. On each ballot shall be printed the endorsement "Official ballot for", and after the word "for" shall follow the designation of the precinct, if appropriate, and the political subdivision for which the ballot is prepared, the date of the election, and a facsimile of the signature of the election official. The ballot shall contain no caption or other endorsement, except as provided in this section. The election official shall use precisely the same quality and tint of paper, the same kind of type, and the same quality and tint of plain black ink for all ballots prepared for one election.

(1.5) A duplicate stub is not required for a ballot that is prepared for a mail ballot election pursuant to article 7.5 of this title.

(1.6) No ballot stub is required for a ballot produced on demand, so long as the quantity of ballots produced for the election can be reconciled by the ballot processing method used by the voting system. Such ballots may contain printed and distinguishing marks, so long as secrecy in voting is protected.

(2) The ballots shall be printed so as to give to each eligible elector a clear opportunity to designate his or her choice of candidates, joint candidates, ballot issues, and ballot questions by a mark as instructed. On the ballot may be printed words that will aid the elector, such as "vote for not more than one".

(3) At the end of the list of candidates for each different office shall be one or more blank spaces in which the elector may write the name of any eligible person not printed on the ballot who has filed an affidavit of intent of write-in candidate pursuant to section 1-4-1101. The number of spaces provided shall be the lesser of the number of eligible electors who have properly filed an affidavit of intent of write-in candidate pursuant to section 1-4-1101 or the number of persons to be elected to the office. No

such blank spaces shall be provided if no eligible elector properly filed an affidavit of intent of write-in candidate.

(4) The names of the candidates for each office shall be arranged under the designation of the office as provided in section 1-5-404. The designated election official shall not print, in connection with any name, any title or degree designating the business or profession of the candidate.

(4.5) If no candidate has been duly nominated and no person has properly filed an affidavit of intent of write-in candidate for an office, the following text shall appear under the designation of the office: "There are no candidates for this office."

(5) Whenever the approval of a ballot issue or ballot question is submitted to the vote of the people, the ballot issue or question shall be printed upon the ballot following the lists of candidates. Constitutional issues shall be printed first, followed by statewide issues and questions, county issues and questions, municipal issues and questions, school district issues and questions, ballot issues and questions for other political subdivisions which are in more than one county, and then ballot issues and questions for other political subdivisions which are wholly within a county. The measures in each category shall be placed in the following order: Measures to increase taxes; measures to retain revenues in excess of a district's fiscal year spending limit; measures to increase debt; citizen petitions; and referred measures.

(5.3) Commencing with the general election held in November 2000, each statewide measure initiated by the people shall be numbered consecutively in regular numerical order beginning with the number twenty. Such consecutive numbering of measures shall continue at any odd-year or general election held after such election at which any such measure is on the ballot beginning with the number following the highest number utilized in the previous election until the number ninety-nine is utilized at an election for any such measure. Such measures shall again be numbered consecutively in regular numerical order beginning with the number one and in accordance with this subsection (5.3) following the utilization of the number ninety-nine for any such measure. The secretary of state may promulgate rules as may be necessary to administer this subsection (5.3), including, but not limited to, rules specifying the grouping of such measures for purposes of such numbering or reserving specific sequences of numbers for certain categories of measures. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(5.4) Commencing with the general election held in November 2004, each statewide measure referred to the people by the general assembly shall be lettered consecutively in regular alphabetical order beginning with the letter A. The consecutive lettering of statewide referred measures shall continue at any odd-year or general election held after the election at which any statewide referred measure is on the ballot beginning with the letter following the last letter utilized in the previous election until the letter Z is utilized at an election for a statewide referred measure. Statewide referred measures shall again be lettered consecutively in regular alphabetical order beginning with the letter A and in accordance with this subsection (5.4) following the utilization of the letter Z for any statewide referred measure. The secretary of state may promulgate rules as may be necessary to administer this subsection (5.4), including but not limited to rules specifying the grouping of statewide referred measures for purposes of lettering or reserving specific sequences of letters for certain categories of measures. Any rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(5.5) The coordinated election official may choose to follow the provisions of subsection (5) of this section, or may choose to use separate ballots. If separate ballots are used, the candidates shall be listed first, followed by measures to increase taxes, measures to increase debt, citizen petitions, and referred measures.

(6) Whenever candidates are to be voted for only by the eligible electors of a particular district, county, or other political subdivision, the names of those candidates shall not be printed on any ballots other than those provided for use in the district, county, or political subdivision in which those candidates are to be voted on.

(7) No printing or distinguishing marks shall be on the ballot except as specifically provided in this code.

(8) The form of the ballot may vary from the requirements of this section if the changes are approved by the secretary of state.

(9) If a referred measure, including but not limited to a measure referred by the school board of a multicounty school district or the board of directors of a multicounty special district to the registered electors of the school district or special district, is referred to registered electors of multiple counties, the alphabetical, numerical, or alphanumeric designation used to identify the measure shall be identical on each ballot that includes the measure.

Source: L. 92: Entire article R&RE, p. 712, § 8, effective January 1, 1993. L. 93: (1) and (5) amended and (5.5) added, p. 1412, § 53, effective July 1. L. 94: (1) amended and (8) added, p. 1161, § 30, effective July 1. L. 96: (3) amended, p. 1743, § 35, effective July 1. L. 97: (1) amended and (1.5) added, p. 184, § 2, effective August 6. L. 2000: (5.3) added, p. 299, § 8, effective August 2. L. 2002: (1), (2), (3), and (4) amended and (1.6) and (4.5) added, p. 1630, § 7, effective June 7. L. 2005: (5) amended and (5.4) and (9) added, p. 1265, § 1, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-402 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-408. Form of ballots - electronic voting. (1) Ballot cards placed upon voting equipment shall, so far as practicable, be arranged as provided by sections 1-5-402, 1-5-403, and 1-5-404; except that they shall be of the size and design required by the voting equipment and may be printed on a number of separate ballot cards that are placed on the voting equipment.

(2) If votes are recorded on a ballot card, a separate write-in ballot may be provided, which may be in the form of a paper ballot or envelope on which the elector may write in the title of the office and the name of a qualified write-in candidate.

(3) Polling places that use electromechanical voting systems may use ballot cards of different colors to ensure that electors receive a full ballot. Such polling places may also use ballot cards of different colors for each party at primary elections.

(4) In polling places using electromechanical voting systems, each ballot card may have two stubs attached. Stubs shall be separated from the ballot card and from each other by perforated lines or other means of removal approved by the designated election official so that they may be readily detached. Stubs shall have the serial ballot number printed on them. The size of the ballot stubs and the spacing of the printed material may be varied to suit the conditions imposed by the use of the ballot cards. The ballot stub may also include color marking or wording to indicate that the stub must show when the ballot is voted and placed in the privacy envelope for deposit in the ballot box. The face of the ballot card shall include the endorsement "Official ballot for", and after the word "for" shall follow the designation of the precinct, if appropriate, and the political subdivision for which the ballot is prepared, the date of the election, and a facsimile of the signature of the designated election official.

Source: L. 92: Entire article R&RE, p. 713, § 8, effective January 1, 1993. L. 97: (4) amended, p. 185, § 3, effective August 6. L. 2004: (1), (3), and (4) amended, p. 1344, § 6, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-405 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 and 1-6-117 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending subsections (1), (3), and (4), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 281, 282.

C.J.S. See 29 C.J.S., Elections, §§ 266, 301.

1-5-409. Single cross mark for party slate not permitted. Each office in every election shall be voted upon separately, and no emblem, device, or political party designation shall be used on the official ballot at any election by which an eligible elector may vote for more than one office by placing a single cross mark on the ballot or by writing in the name of any political party or political organization.

Source: L. 92: Entire article R&RE, p. 714, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-406 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-209 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 287.

C.J.S. See 29 C.J.S., Elections, §§ 271, 289, 292.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Prior to the enactment of this section, a cross marked in ink against a party emblem on a ballot indicated a vote for the entire set of candidates of that party, while a cross so marked opposite the name of an individual candidate indicated a vote for that individual. When a ballot was marked against a party emblem, thereby indicating a vote for the entire list of candidates of such party, and was also marked against one or more names of

candidates in another list, the ballot was void as to any office so doubly marked. *Heiskell v. Landrum*, 23 Colo. 65, 46 P. 120 (1896).

And where the voter wrote, in the blank above the list of nominations, the name of a particular party, he indicated an intention to vote for all the candidates of that party named upon the ballot, unless, he manifested a different intention, i.e., by inserting an "X" opposite the name of an opposing candidate, or if there are two or more candidates for the same office, by drawing a line through the name of those, or the one, for whom he did not desire to vote. *Bromley v. Hallock*, 57 Colo. 148, 140 P. 186 (1914).

1-5-410. Printing and distribution of ballots. In political subdivisions using paper ballots or electronic ballot cards, the designated election official shall have a sufficient number of ballots printed and distributed to the election judges in the respective precincts. The ballots shall be sent in one or more sealed packages for each precinct with marks on the outside of each clearly stating the precinct and polling place for which it is intended, together with the beginning and ending sequence number of the ballots enclosed. The packages shall be delivered on any day on which a judges' school of instruction is held or by 8 p.m. on the Monday before election day. Receipts for ballots thus delivered shall be given by the election judges who receive the ballots. The receipts shall be filed with the designated election official, who shall also keep a record of the time when and the manner in which each of the packages was delivered. The election judges receiving the packages shall produce them, with the seals unbroken, in the proper polling place at the opening of the polls on election day and, in the presence of all election judges, shall open the packages.

Source: L. 92: Entire article R&RE, p. 714, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-407 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-211 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 312.

1-5-411. Substitute ballots. If the ballots to be furnished to any election judges are not delivered at the time and in the manner required in section 1-5-410 or if after delivery they are destroyed or stolen, it shall be the duty of the designated election official to cause other ballots to be prepared, as nearly in the form prescribed as practicable, with the words "substitute ballot" printed on each ballot. Upon receipt of the ballots thus prepared from the designated election official, accompanied by a statement under oath that the designated election official prepared and furnished the substitute ballots and that the original ballots have not been received or have been destroyed or stolen, the election judges shall cause the substitute ballots to be used at the election. If from any cause neither the official ballots nor the substitute ballots are ready in time to be distributed for the election or if the supply of ballots is exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in the form of the official ballots, may be used until substitutes prepared by the designated election official can be printed and delivered.

Source: L. 92: Entire article R&RE, p. 715, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-408 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-212 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 262.

1-5-412. Correction of errors. (1) The designated election official shall correct without delay any errors in publication or in sample or official ballots which are discovered or brought to the official's attention and which can be corrected without interfering with the timely distribution of the ballots.

(2) When it appears by verified petition of a candidate or the candidate's agent to any district court that any error or omission has occurred in the publication of the names or description of the candidates or in the printing of sample or official election ballots which has been brought to the attention of the designated election official and has not been corrected, the court shall issue an order requiring the designated election official to correct the error forthwith or to show cause why the error should not be corrected. Costs, including reasonable attorney fees, may be assessed in the discretion of the court against either party.

(3) If, before the date set for election, a duly nominated candidate withdraws by filing an affidavit of withdrawal with the designated election official or dies and the fact of the death becomes known to the designated election official before the ballots are printed, the name of the candidate shall not be printed on the ballots. Except in the case of a vacancy to be filled in accordance with the provisions of section 1-4-1002 (2.3) or (2.5), if the ballots are already printed, the votes cast for the withdrawn or deceased candidate are invalid and shall not be counted.

Source: L. 92: Entire article R&RE, p. 715, § 8, effective January 1, 1993. **L. 99:** (3) amended, p. 934, § 3, effective August 4. **L. 2007:** (3) amended, p. 1975, § 17, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-409 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-12-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (3) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For taxing reasonable attorney's fees in favor of the defendant when an action is vexatiously commenced, see C.R.C.P. 3(a).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 297.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The purpose of allowing the correction of errors is to give the opposing candidate ample opportunity to see that his opponent's name was not upon an unauthorized ticket or under a device to the use of which he was not entitled. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

As the fundamental object of all election laws is the freedom and purity of the ballot. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

And ample provision is made for the correction of ballots prior to the election. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

But it is the duty of candidates to make such objections in seasonable time, since it would not be in the interest of a fair expression of the will of the people to

allow a candidate to lie by and not point out such objections as he may have to the form of the ballot until after the election has been held. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

Moreover, the voter has no control whatever over the publication of the names of candidates or the form of the ballots. If, for some defect in these particulars, the ballot must be rejected, the door would be open to fraud. *Allen v. Glynn*, 17 Colo. 338, 29 P. 670 (1892).

Clerk cannot correct improper certification of nominations. It is the duty of the county clerk to cause to be printed the names as certified to him by the secretary of state, and if such nominations are improperly certified, it constitutes no such error or omission in the publication of the names or description of the candidates as he is authorized to correct. *Smith v. Harris*, 18 Colo. 274, 32 P. 616 (1893).

1-5-413. Sample ballots. Sample ballots shall be printed in the form of official ballots, but upon paper of a different color from the official ballots. Sample ballots shall be delivered to the election judges and posted with the cards of instruction provided for in section 1-5-504. All sample ballots are subject to public inspection.

Source: L. 92: Entire article R&RE, p. 716, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-410 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-207 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

PART 5

POLLING PLACE SUPPLIES AND EQUIPMENT

1-5-501. Sufficient voting booths, voting machines, or electronic voting equipment. (1) At all elections in political subdivisions which use paper ballots, the governing body shall provide in each polling place a sufficient number of voting booths. Each voting booth shall be situated so as to permit eligible electors to prepare their ballots screened from observation and shall be furnished with supplies and conveniences necessary for voting.

(2) (a) At all elections in political subdivisions that use electronic or electromechanical voting systems, the designated election official shall supply each precinct with sufficient voting equipment.

(b) At general elections in counties that use electronic or electromechanical voting systems, the county clerk and recorder shall supply each precinct with one voting booth for each four hundred active registered electors or fraction thereof.

Source: L. 92: Entire article R&RE, p. 716, § 8, effective January 1, 1993. L. 2004: (2) amended, p. 1344, § 7, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-501 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-203 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

C.J.S. See 29 C.J.S., Elections, §§ 313-315.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Mere irregularities in the conduct of an

election which do not deprive any legal voter of the elective franchise, and from which no injury results to anyone, do not warrant the rejection of the official returns of a precinct, although such irregularities may include a failure to strictly comply with certain statutory regulations, such as, for example, the failure to provide a guard rail. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

1-5-502. Ballot boxes for nonmachine voting. The governing body of each political subdivision using paper ballots or an electronic vote counting system shall provide at least one ballot box for each polling place. For elections which have both receiving and counting judges, the governing body shall provide no less than one ballot box for each set of receiving judges and one ballot box for each set of counting judges at each place of voting. The ballot boxes shall be strongly constructed so as to prevent tampering, with a small opening at the top and with a lid to be locked. The ballot boxes and keys shall be kept by the designated election official and delivered to the election judges no later than the day preceding any election, to be returned as provided in section 1-6-109.5.

Source: L. 92: Entire article R&RE, p. 716, § 8, effective January 1, 1993. L. 98: Entire section amended, p. 586, § 25, effective April 30. L. 99: Entire section amended, p. 774, § 48, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-502 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-206 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For delivery of election returns, ballot boxes, and other election papers, see § 1-7-701.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 303, 314.

C.J.S. See 29 C.J.S., Elections, § 314.

1-5-503. Arrangement of voting equipment or voting booths and ballot boxes. The voting equipment or voting booths and the ballot box shall be situated in the polling place so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting shall be permitted within the immediate voting area, which shall be considered as within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or the designated election official, and then only when necessary to keep order and enforce the law.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. L. 2004: Entire section amended, p. 1344, § 8, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-503 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-4-204 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303. **C.J.S.** See 29 C.J.S., Elections, §§ 313-315.

1-5-504. Instruction cards. (1) The designated election official of each political subdivision shall furnish to the election judges a sufficient number of instruction cards for the guidance of eligible electors in preparing their ballots. The election judges shall post at least one of the cards in each polling place upon the day of the election. The cards shall be printed in large, clear type and shall contain full instructions to the eligible electors as to what should be done:

- (a) To obtain ballots for voting;
- (b) To prepare the ballots for deposit in the ballot box;
- (c) To obtain a new ballot in the place of one spoiled by accident or mistake;
- (d) To obtain assistance in marking ballots; and
- (e) To vote for a write-in candidate.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-504 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-213 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-5-504.5. Items to be posted at the polling place on or before election day. (1) The following items shall be posted at each polling place on or before election day:

- (a) A polling place sign visible from the outside of the closest entrance to the polling place pursuant to section 1-5-106;
- (b) A sign notifying persons outside and inside of the polling place that no electioneering is permitted within one hundred feet of the polling place pursuant to section 1-13-714;
- (c) Instruction cards for the guidance of eligible electors pursuant to section 1-5-504;
- (d) Sample ballots pursuant to section 1-5-413;
- (e) An explanation of the procedures that govern the provision of voting assistance to electors with disabilities who require such assistance pursuant to section 1-7-111. The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., to prescribe the form of such explanation.

Source: L. 96: Entire section added, p. 1744, § 36, effective July 1. **L. 2000:** (1)(e) added, p. 1086, § 1, effective May 26.

1-5-505. Election expenses to be paid by county. (1) Except as provided in section 1-5-505.5, the cost of conducting general, primary, and congressional vacancy elections, including the cost of printing and supplies, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses.

(2) (a) For a special legislative election, if the state senatorial or state representative district in which the special legislative election is to be held is comprised of one or more whole counties or a part of one county and all or a part of one or more other counties, the cost of conducting a special legislative

election, including the cost of printing and supplies, shall be a county charge of the county in which there were irregularities in the votes cast or counted at the general election for such district.

(b) If the state senatorial or state representative district in which the special election is to be held is comprised of a portion of one county, the cost of conducting a special legislative election, including the cost of printing and supplies, shall be a county charge of such county.

(c) The payment of such costs of a special legislative election shall be provided for in the same manner as the payment of other county expenses.

Source: **L. 92:** Entire article R&RE, p. 717, § 8, effective January 1, 1993. **L. 99:** Entire section amended, p. 1389, § 9, effective June 4. **L. 2000:** (1) amended, p. 655, § 1, effective August 2.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-505 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-4-214 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For payment of county expenses, see § 30-25-101 et seq.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298, 303.

1-5-505.5. State reimbursement to counties for ballot measure elections. (1) As used in this section, unless the context otherwise requires:

(a) "Ballot issue" shall have the same meaning as provided in section 1-1-104 (2.3).

(b) "Ballot question" shall have the same meaning as provided in section 1-1-104 (2.7).

(2) For an election held in an odd-numbered year pursuant to article 41 of this title in which the only item on the ballot of a particular county is a state ballot issue, the state shall reimburse such county for the costs incurred that are shown by such county to be directly attributable to conducting such election and shall not include any portion of the usual costs of maintaining the office of the clerk and recorder, including, without limitation, overhead costs and personal service costs of permanent employees.

(3) For any other odd- or even-numbered year election in which a state ballot issue or state ballot question is on the ballot of a particular county, the state shall reimburse such county for the cost of the duties performed by the county clerk and recorder that relate to conducting the election on the ballot issue or ballot question; except that the reimbursement shall be set at the following rates:

(a) For counties with ten thousand or fewer active registered electors, eighty cents for each active registered elector as of the time of the election;

(b) For counties with more than ten thousand active registered electors, seventy cents for each active registered elector as of the time of the election.

(4) The general assembly shall make appropriations to the department of state from the department of state cash fund or from the general fund for the purpose of reimbursing counties under the terms of this section in conformity with section 24-21-104.5, C.R.S.

Source: **L. 2000:** Entire section added, p. 655, § 2, effective August 2. **L. 2006:** (3) amended, p. 2032, § 10, effective June 6.

1-5-506. Election expenses in nonpartisan elections. The cost of conducting a nonpartisan election, including the cost of printing, mailing voter information cards pursuant to section 1-5-206, and supplies, shall be paid by the governing body calling the election.

Source: **L. 92:** Entire article R&RE, p. 717, § 8, effective January 1, 1993. **L. 93:** Entire section amended, p. 1413, § 54, effective July 1. **L. 2000:** Entire section amended, p. 1085, § 2, effective August 2.

1-5-507. County clerk and recorder to give estimate. In an election called by a nonpartisan governing body where the county clerk and recorder will have responsibilities for the election, the county clerk and recorder shall give to the governing body estimates of the costs for conducting a coordinated election or a mail ballot election so that the governing body may choose the appropriate method of election.

Source: L. 92: Entire article R&RE, p. 717, § 8, effective January 1, 1993. L. 93: Entire section amended, p. 1413, § 55, effective July 1.

PART 6

AUTHORIZATION AND USE OF VOTING MACHINES AND ELECTRONIC VOTING SYSTEMS

1-5-601. Use of voting systems. In all elections held in this state, the votes may be cast, registered, recorded, and counted by means of an electronic or electromechanical voting system as provided in this part 6.

Source: L. 92: Entire article R&RE, p. 718, § 8, effective January 1, 1993. L. 2004: Entire section amended, p. 1345, § 9, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-601 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

1-5-601.5. Compliance with federal requirements. All voting systems and voting equipment offered for sale on or after May 28, 2004, shall meet the voting systems standards that were promulgated in 2002 by the federal election commission and that may thereafter be promulgated by the federal election assistance commission. Subject to section 1-5-608.2, nothing in this section shall be construed to require any political subdivision to replace a voting system that is in use prior to May 28, 2004.

Source: L. 2004: Entire section added, p. 1346, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-602. Requirements for voting machines - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 718, § 8, effective January 1, 1993. L. 93: (1)(f) and (1)(k) amended, p. 1414, § 56, effective July 1. L. 95: (1)(e) amended, p. 862, § 119, effective July 1. L. 2004: (2) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-602 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-603. Adoption and payment for voting machines. The governing body of any political subdivision may adopt for use at elections any kind of voting machine fulfilling the requirements for voting machines set forth in this part 6. These voting machines may be used at any or all elections held in the political subdivision for casting, registering, and counting votes. The governing body of any political subdivision which adopts and purchases or leases voting machines shall provide for the payment of the purchase price or the rent in such manner as may be in the best interest of the political subdivision and may for that purpose provide for the issuance of interest-bearing bonds, certificates of indebtedness, or other obligations, which shall be a charge upon the county. The bonds, certificates of indebtedness, or other obligations may be made payable at such times, not exceeding ten years from the date of issue, as may be determined by the governing body but shall not be issued or sold at less than par.

Source: L. 92: Entire article R&RE, p. 719, § 8, effective January 1, 1993. L. 2007: Entire section amended, p. 2017, § 1, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-603 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-6-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303. by charter and ordinances rather than by statute. *Kingsley v. City & County of Denver*, 126 Colo. 194, 247 P.2d 805 (1952) (decided under former law).

The purchase of voting machines by a municipality is a local or municipal matter controlled

1-5-604. Experimental use - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. L. 2004: (2) added by revision, p. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-604 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-605. Other laws apply - paper ballots permitted for absentee voting - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. L. 2004: (2) added by revision, p. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-605 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (2) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-605.5. Custody of voting system. The county clerk and recorder or designated election official shall be the custodian of the voting system in a political subdivision and may appoint deputies necessary to prepare and supervise the voting system prior to and during elections.

Source: L. 2004: Entire section added, p. 1346, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-605.7. Mechanical lever voting machines - prohibited. (1) No voting system using mechanical lever voting machines may be used in any election in this state.

(2) This section shall apply to elections held on and after January 1, 2006.

Source: L. 2004: Entire section added, p. 1345, § 12, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-606. Election officials and employees not to have interest in voting equipment or devices. No election official or employee of an election official having duties or responsibilities in connection with the conduct of any election shall have any financial or proprietary interest, either directly or indirectly, in the manufacture, sale, maintenance, servicing, repair, or transportation of voting equipment. This section shall not apply to any designated election official or employee of a designated election official participating in a coordinated election who has no independent decision-making responsibility concerning the selection of voting equipment by the county clerk and recorder or whose interest derives solely from ownership of shares in a mutual or pension fund.

Source: L. 92: Entire article R&RE, p. 720, § 8, effective January 1, 1993. **L. 96:** Entire section amended, p. 1744, § 37, effective July 1. **L. 2004:** Entire section amended, p. 1345, § 10, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-606 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-607. Elected officials not to handle voting equipment or devices. (1) In any political subdivision having a population of one hundred thousand or more, it is unlawful for any elected official or candidate for elective office to prepare, maintain, or repair any voting equipment or device that is to be used or is used in any election. The provisions of this section shall be limited to actual physical contact with any voting equipment or device or any of its parts and shall not be construed as prohibiting an elected official from directing employees or other persons who are not elected officials to prepare, maintain, repair, or otherwise handle any voting equipment or devices.

(2) The provisions of this section shall not be construed to prohibit any elected official or candidate for elective office from voting at any election.

(3) The provisions of this section shall not apply to precinct committeepersons who act as election judges.

(4) Repealed.

Source: **L. 92:** Entire article R&RE, p. 720, § 8, effective January 1, 1993. **L. 96:** (4) repealed, p. 1775, § 84, effective July 1. **L. 2004:** (1) amended, p. 1345, § 11, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-607 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For penalties for election offenses, see § 1-13-111.

(2) For the legislative declaration contained in the 2004 act amending subsection (1), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-608. Requirements - electronic voting systems - repeal. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 721, § 8, effective January 1, 1993. **L. 94:** (1)(e) amended, p. 1162, § 31, effective July 1. **L. 95:** (1)(c) amended, p. 862, § 120, effective July 1. **L. 2004:** (3) added by revision, p. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-6-608 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-6-115 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (3) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-608.2. Punch card voting systems - prohibited. (1) No punch card electronic voting system or other voting system in which the elector uses a device to pierce the ballot may be used in any election in this state.

(2) This section shall apply to elections held on and after January 1, 2006.

Source: **L. 2004:** Entire section added, p. 1345, § 12, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-608.5. Electronic and electromechanical voting systems - independent testing. (1) A recognized independent testing authority may test, approve, and qualify electronic and electromechanical voting systems for sale and use in the state of Colorado, if:

(a) The independent testing authority has met all of the obligations and ongoing requirements necessary to gain certification as an independent testing authority from the federal election assistance commission.

(b) The independent testing authority conducts any and all tests required by the federal election assistance commission for granting certification to independent testing authorities to verify the integrity of the electronic and electromechanical voting systems to be used in Colorado.

(2) No electronic or electromechanical voting system shall be used in any public election in this state unless it has been certified by the secretary of state following successful qualification testing conducted by a recognized independent testing authority pursuant to this section.

Source: **L. 93:** Entire section added, p. 1414, § 57, effective July 1. **L. 2004:** Entire section amended, p. 1346, § 13, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-609. Acquisition and use authorized - repeal. (Repealed)

Source: L. 92: Entire article R&RE, p. 721, § 8, effective January 1, 1993. **L. 2004:** (3) added by revision, pp. 1361, 1213, §§ 30, 31, 108.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were the same as those contained in 1-6-609 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were the same as those contained in 1-6-116 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) Subsection (3) provided for the repeal of this section, effective January 1, 2006. (See L. 2004, pp. 1361, 1213.)

1-5-610. Preparation for use - electronic voting. (1) Prior to an election in which an electronic voting system is to be used, the designated election official shall have all system components prepared for voting and shall inspect and determine that each vote recorder or voting device is in proper working order. The designated election official shall cause a sufficient number of recorders or devices to be delivered to each election precinct in which an electronic voting system is to be used.

(2) The designated election official shall supply each election precinct in which vote recorders or voting devices are to be used with a sufficient number of ballots, ballot cards, sample ballots, ballot boxes, and write-in ballots and with such other supplies and forms as may be required. Each ballot or ballot card shall have a serially numbered stub attached, which shall be removed by an election judge before the ballot or ballot card is deposited in the ballot box.

Source: L. 92: Entire article R&RE, p. 722, § 8, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-6-610 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-6-118 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

1-5-611. Requirements - nonpunch card electronic voting systems. (1) No nonpunch card electronic voting system shall be purchased, leased, or used unless it fulfills the following requirements:

(a) It provides for voting in secrecy;

(b) It permits each elector to write in the names of eligible candidates not appearing on the printed ballot, to vote for as many candidates for an office as there are vacancies for which the elector is entitled to vote, and to vote for or against any ballot issue upon which the elector is entitled to vote;

(c) It rejects any vote for an office or on a ballot issue if the number of votes exceeds the number the elector is entitled to cast;

(d) It permits each elector, other than at a primary election, to vote for the candidates of one or more parties and for unaffiliated candidates;

(e) It prevents the elector from voting for the same candidates more than once for the same office; and

(f) If the system uses a voting device:

(I) It is suitably designed, of durable construction, and capable of being used safely, efficiently, and accurately in the conduct of elections and the tabulation of votes;

(II) It permits the names of candidates and the text of issues to be printed on pages which are securely attached to the voting device, the pages to be securely locked in a metal frame or sealed to prevent tampering;

(III) It contains a protective counter with a register which cannot be reset, which shall register the cumulative total number of movements of the operating mechanism; and

(IV) It is capable of providing printouts of vote totals by office and candidate or by ballot issue, including a numeric-only printout to be used for testing as provided in section 1-7-509.

Source: **L. 92:** Entire article R&RE, p. 722, § 8, effective January 1, 1993. **L. 95:** (1)(d) amended, p. 862, § 121, effective July 1. **L. 2005:** (1)(f)(IV) amended, p. 1425, § 55, effective June 6; (1)(f)(IV) amended, p. 1460, § 55, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-6-611 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-5-612. Use of electronic and electromechanical voting systems. (1) The governing body of any political subdivision may, upon consultation with the designated election official, adopt an electronic or electromechanical voting system, including any upgrade in hardware, firmware, or software, for use at the polling places in the political subdivision. The system may be used for recording, counting, and tabulating votes at all elections held by the political subdivision.

(2) An electronic or electromechanical voting system may be used on or after May 28, 2004, only if the system has been certified by the secretary of state in accordance with this part 6.

Source: **L. 2004:** Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-613. Purchase and sale of voting equipment. (1) The secretary of state shall adopt uniform rules in accordance with article 4 of title 24, C.R.S., for the purchase and sale of voting equipment in the state.

(2) On and after May 28, 2004, the governing body or designated election official of a political subdivision may purchase a voting system only if the voting system has been certified for use in this state by the secretary of state in accordance with this part 6.

(3) The governing body or designated election official of a political subdivision shall notify the secretary of state before purchasing or selling voting equipment. The secretary of state shall attempt to coordinate the sale of excess or outmoded equipment by one political subdivision with purchases of necessary equipment by other political subdivisions.

(4) The secretary of state shall provide information at the request of the governing bodies of the various political subdivisions of the state on the availability and sources of new and used voting equipment.

Source: **L. 2004:** Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-614. Certification of electronic and electromechanical voting systems - standards. The secretary of state shall certify electronic and electromechanical voting systems and approve the purchase, installation, and use of such systems by political subdivisions and establish standards for certification.

Source: **L. 2004:** Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-615. Electronic and electromechanical voting systems - requirements. (1) No electronic or electromechanical voting system shall be certified by the secretary of state unless such system:

- (a) Provides for voting in secrecy;
 - (b) Permits each elector to vote for all offices for which the elector is lawfully entitled to vote and no others, to vote for as many candidates for an office as the elector is entitled to vote for, and to vote for or against any ballot question or ballot issue on which the elector is entitled to vote;
 - (c) Permits each elector to verify his or her votes privately and independently before the ballot is cast;
 - (d) Permits each elector privately and independently to change the ballot or correct any error before the ballot is cast, including by voting a replacement ballot if the elector is otherwise unable to change the ballot or correct an error;
 - (e) If the elector overvotes:
 - (I) Notifies the elector before the ballot is cast that the elector has overvoted;
 - (II) Notifies the elector before the vote is cast that an overvote for any office, ballot question, or ballot issue will not be counted; and
 - (III) Gives the elector the opportunity to correct the ballot before the ballot is cast;
 - (f) Does not record a vote for any office, ballot question, or ballot issue that is overvoted on a ballot cast by an elector;
 - (g) For electronic and electromechanical voting systems using ballot cards, accepts an overvoted or undervoted ballot if the elector chooses to cast the ballot, but it does not record a vote for any office, ballot question, or ballot issue that has been overvoted;
 - (h) In a primary election, permits each elector to vote only for a candidate seeking nomination by the political party with which the elector is affiliated;
 - (i) In a presidential election, permits each elector to vote by a single operation for all presidential electors of a pair of candidates for president and vice president;
 - (j) Does not use a device for the piercing of ballots by the elector;
 - (k) Provides a method for write-in voting;
 - (l) Counts votes correctly;
 - (m) Can tabulate the total number of votes for each candidate for each office and the total number of votes for and against each ballot question and ballot issue for the polling place;
 - (n) Can tabulate votes from ballots of different political parties at the same polling place in a primary election;
 - (o) Can automatically produce vote totals for the polling place in printed form; and
 - (p) Saves and produces the records necessary to audit the operation of the electronic or electromechanical voting system, including a permanent paper record with a manual audit capacity.
- (2) The permanent paper record produced by the electronic or electromechanical voting system shall be available as an official record for any recount conducted for any election in which the system was used.

Source: L. 2004: Entire section added, p. 1347, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-616. Electronic and electromechanical voting systems - standards - procedures. (1) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., that establish minimum standards for electronic and electromechanical voting systems regarding:

- (a) Functional requirements;
- (b) Performance levels;
- (c) Physical and design characteristics;
- (d) Documentation requirements;

- (e) Evaluation criteria;
- (f) Audit capacity;
- (g) Security requirements;
- (h) Telecommunications requirements; and
- (i) Accessibility.

(2) The secretary of state may review the rules adopted pursuant to subsection (1) of this section governing standards for certification of electronic or electromechanical voting systems to determine the adequacy and effectiveness of the rules in assuring that elections achieve the standards established by section 1-1-103.

(3) The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., to achieve the standards established by section 1-1-103 for the procedures of voting, including write-in voting, and of counting, tabulating, and recording votes by electronic or electromechanical voting systems used in this state.

(4) The secretary of state shall adapt the standards for certification of electronic or electromechanical voting systems established by rule pursuant to subsection (1) of this section to ensure that new technologies that meet the requirements for such systems are certified in a timely manner and available for selection by political subdivisions and meet user standards.

(5) (a) Each designated election official shall establish written procedures to ensure the accuracy and security of voting in the political subdivision and submit the procedures to the secretary of state for review. The secretary of state shall notify the designated election official of the approval or disapproval of the procedures no later than fifteen days after the secretary of state receives the submission.

(b) Each designated election official shall submit any revisions to the accuracy and security procedures to the secretary of state no less than sixty days before the first election in which the procedures will be used. The secretary of state shall notify the designated election official of the approval or disapproval of said revisions no later than fifteen days after the secretary of state receives the submission.

Source: L. 2004: Entire section added, p. 1349, § 14, effective May 28. L. 2006: (5)(a) amended, p. 2032, § 11, effective June 6.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-617. Examination - testing - certification. (1) (a) After an electronic or electromechanical voting system is tested in accordance with section 1-5-608.5, the voting system provider may submit the system to the secretary of state for certification.

(b) The secretary of state shall examine each electronic or electromechanical voting system submitted for certification and determine whether the system complies with the requirements of section 1-5-615 and the standards established under section 1-5-616.

(c) The secretary of state shall decide whether to certify an electronic or electromechanical voting system within ninety days after the system is submitted for certification.

(2) The secretary of state shall appoint one or more experts in the fields of data processing, mechanical engineering, or public administration to assist in the examination and testing of electronic or electromechanical voting systems submitted for certification and to produce a written report on each system.

(3) Neither the secretary of state nor any examiner shall have any pecuniary interest in any voting equipment.

(4) Within thirty days after deciding to certify an electronic or electromechanical voting system, the secretary of state shall make a report on the system containing a description of the system and its operation, with drawings or photographs showing the system. The secretary of state shall send a notice of certification and a copy of the report to the voting system provider that submitted the system for

certification. The secretary of state shall notify the governing bodies of the political subdivisions of the state of the certification and make the notice of certification and report available to them upon request.

(5) The designated election official of a political subdivision that plans to use an electronic or electromechanical voting system that has been certified in accordance with this section shall apply to the secretary of state for approval of the purchase, installation, and use of the system. The secretary of state shall prescribe the form and procedure of the application by rule adopted in accordance with article 4 of title 24, C.R.S.

(6) The secretary of state may provide technical assistance to designated election officials on issues related to the certification of the purchase, installation, and use of electronic and electromechanical voting systems by a political subdivision.

Source: L. 2004: Entire section added, p. 1350, § 14, effective May 28. L. 2005: (5) amended, p. 759, § 3, effective June 1.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-618. Modification of electronic and electromechanical voting systems - definitions. (1) After an electronic or electromechanical voting system has been certified by the secretary of state, a political subdivision may not adopt any modification of the system until the modification is certified by the secretary of state. A person desiring approval of a modification shall submit a written application for approval to the secretary of state.

(2) The requirements for approval of a modified electronic or electromechanical voting system are the same as those prescribed by this part 6 for the initial certification of the system.

(3) The secretary of state shall approve the modified electronic or electromechanical voting system by written order if the modified system satisfies the applicable requirements for certification.

(4) If the secretary of state does not approve the modified design, the secretary of state shall by written order:

(a) Invite the applicant to submit additional information in support of the application, submit the modified electronic or electromechanical voting system itself, or both; or

(b) Require an examination of the modified electronic or electromechanical voting system by independent examiners.

(5) After examining the additional information, the modified electronic or electromechanical voting system, or the report of an independent examiner submitted pursuant to subsection (4) of this section, the secretary of state shall approve the modified system by written order if the system satisfies the applicable requirements for certification.

(6) If a modification to a certified electronic or electromechanical voting system does not satisfy the applicable requirements for certification, the secretary of state shall suspend the sale of the system in this state until the system satisfies the requirements for certification.

(7) For purposes of this section, "modification" means a revision or a new release of an electronic or electromechanical voting system.

Source: L. 2004: Entire section added, p. 1351, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-619. Temporary use of electronic and electromechanical voting systems. (1) After an electronic or electromechanical voting system has been tested in accordance with section 1-5-608.5 but has not yet been certified by the secretary of state, a voting system provider or designated election official may apply to the secretary of state for temporary approval of the system.

(2) The secretary of state shall, by rule adopted in accordance with article 4 of title 24, C.R.S., establish standards and procedures for temporary approval of electronic and electromechanical voting systems.

(3) An electronic or electromechanical voting system may be temporarily approved for a total of no more than one year, and the secretary of state may revoke such approval at any time. Temporary approval of a system shall not supersede the certification requirements of this part 6.

(4) A temporarily approved electronic or electromechanical voting system may not be used in any election without the written authorization of the secretary of state.

(5) A designated election official may enter into a contract to rent or lease a temporarily approved electronic or electromechanical voting system for a specific election with the approval of the secretary of state. A political subdivision shall not acquire title to a temporarily approved system.

(6) The use of a temporarily approved electronic or electromechanical voting system shall be valid for all purposes.

Source: L. 2004: Entire section added, p. 1351, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-620. Electronic or electromechanical voting system information - software. When a political subdivision purchases or adopts an electronic or electromechanical voting system, the vendor of the system shall send to the secretary of state copies of the software user and operator manuals, and any other information, specifications, or documentation required by the secretary of state relating to a certified system and its equipment. Any such information or materials that are not on file with and approved by the secretary of state, including any updated or modified materials, shall not be used in an election.

Source: L. 2004: Entire section added, p. 1352, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-621. Compliance - definitions. (1) Notwithstanding any provision of law to the contrary, upon filing of a complaint, the secretary of state shall investigate the complaint and may review or inspect the electronic or electromechanical voting system of a political subdivision at any time, including election day, to determine whether the system complies with the applicable requirements of this part 6 or deviates from a certified system.

(2) A voting system provider or a designated election official using an electronic or electromechanical voting system shall give notice to the secretary of state within twenty-four hours of a malfunction of its system in preparation for or during an election. The notice may be verbal or in writing. For purposes of this section, "malfunction" means a deviation from a correct value in a voting system.

(3) Upon receipt of the notice sent pursuant to subsection (2) of this section, the secretary of state shall determine whether further information on the malfunction is required. At the written or verbal request of the secretary of state, the voting system provider or designated election official shall submit a report to the secretary of state's office describing the reprogramming or other actions necessary to correct the malfunction of the electronic or electromechanical voting system. The report shall indicate whether permanent changes are necessary to prevent similar malfunctions in the future. The report shall be submitted within thirty days after the date of the request by the secretary of state. Failure to submit the report within the required period shall be grounds to decertify the system. A copy of the report shall be attached to the most recent certification of the system on file in the secretary of state's office. The secretary of state shall distribute a copy of the report to all political subdivisions that use the system.

(4) If the secretary of state determines after inspecting an electronic or electromechanical voting system or reviewing the report submitted pursuant to subsection (3) of this section that the system does not comply with applicable standards or deviates from a certified system, the secretary shall by written order:

(a) Specify actions to remedy the defect in the electronic or electromechanical voting system and direct the designated election official or voting system provider, as appropriate, to perform such actions;

(b) Prohibit the use of the electronic or electromechanical voting system or any part of the system by a political subdivision that adopted the system for use in an election until the actions to remedy the defect are performed and approved by the secretary of state;

(c) Limit the use of the electronic or electromechanical voting system or any part of the system to circumstances or conditions stated in the order; or

(d) Decertify the electronic or electromechanical voting system.

(5) Upon decertification of an electronic or electromechanical voting system, the secretary of state shall notify all political subdivisions that use the system and the providers of the system that the certification of the system for use and sale in this state is withdrawn. The notice shall be in writing and shall indicate the reasons for the decertification of the system and the effective date of the decertification.

(6) Within thirty days after receiving notice from the secretary of state of the decertification of an electronic or electromechanical voting system, a political subdivision or provider of a voting system that is decertified may request in writing that the secretary of state reconsider its decision to decertify the electronic or electromechanical voting system. Upon receipt of the request, the secretary of state shall hold a public hearing to reconsider the decision to decertify the system. Any interested party may submit testimony or documentation in support of or in opposition to the decision to decertify the system. Following the hearing, the secretary of state may affirm or reverse the decision.

(7) The secretary of state shall amend or rescind an order issued under this section if the secretary of state determines that the electronic or electromechanical voting system has been modified to comply with applicable standards or no longer deviates from the certified system.

Source: L. 2004: Entire section added, p. 1352, § 14, effective May 28.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

PART 7

ACCESSIBILITY FOR ELECTORS WITH DISABILITIES

Cross references: For the legislative declaration contained in the 2004 act enacting this part 7, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-5-701. Legislative declaration - federal funds. (1) The general assembly hereby finds and declares that:

(a) It is the intent of the general assembly that all state requirements should meet or exceed the minimum federal requirements for accessibility of voting systems and polling places to persons with disabilities.

(b) All state laws, rules, standards, and codes governing voting systems and polling place accessibility shall be maintained to ensure that the state is eligible for federal funds.

Source: L. 2004: Entire part added, p. 1354, § 15, effective May 28.

1-5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Accessible voter interface device" means a device that communicates voting instructions and the information on the ballot to an elector and allows the elector to select and vote for candidates, ballot questions, and ballot issues in accordance with the standards in section 1-5-704. A ballot marking device may be considered an accessible voter interface device.

(2) "Alternative formats" has the same meaning ascribed in the federal "Americans with Disabilities Act of 1990", as amended, (P.L. No. 101-336), codified at 42 U.S.C. sec. 12101 et seq., including specifically the technical assistance manuals promulgated thereunder.

(2.5) "Ballot marking device" means a device that allows an elector to mark a ballot card used in an electromechanical voting system and that meets the standards in section 1-5-704 (1) (o).

(3) "Tactile input device" means a device such as a keyboard with which an elector provides information to a voting system by touching the device.

Source: **L. 2004:** Entire part added, p. 1354, § 15, effective May 28. **L. 2007:** (1) amended and (2.5) added, p. 1975, § 18, effective August 3.

Editor's note: Subsections (1) and (2.5) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-5-703. Accessibility of polling places to persons with disabilities. (1) Each polling place shall be made accessible to persons with disabilities by complying with the following standards of accessibility:

(a) Doors, entrances, and exits used to enter or exit the polling place shall have a minimum width of thirty-two inches.

(b) Any curb adjacent to the main entrance to a polling place shall have curb cuts or temporary ramps.

(c) Any steps necessarily used to enter the polling place shall have a temporary handrail and ramp with edge protection.

(d) At the polling place, no barrier shall impede the path of electors with disabilities to the voting booth.

(2) Emergency polling places are exempt from compliance with this section.

(3) Except as otherwise provided in subsection (2) of this section, a designated election official shall only select as polling places sites that meet the standards of accessibility set forth in subsection (1) of this section.

(4) Before selecting polling places, the designated election official shall submit to the secretary of state an accessibility survey in the form prescribed by the secretary of state identifying the criteria for selecting accessible polling places and applying the criteria to proposed polling places.

Source: **L. 2004:** Entire part added, p. 1354, § 15, effective May 28.

1-5-704. Standards for accessible voting systems. (1) Notwithstanding any other provision of this article, each voting system certified by the secretary of state for use in local, state, and federal elections shall have the capability to accept accessible voter interface devices in the voting system configuration to allow the voting system to meet the following minimum standards:

(a) The voting system shall provide a tactile input or audio input device, or both.

(b) The voting system shall provide a method by which electors can confirm any tactile or audio input by audio output using synthetic or recorded human speech.

(c) Any operable controls on the input device that are needed by electors who are visually impaired shall be indicated in braille or otherwise discernible tactilely without actuating the keys.

(d) Devices providing audio and visual access shall be able to work both separately and simultaneously.

(e) If a nonaudio access approach is provided, the voting system may not require color perception. The voting system shall use black text or graphics, or both, on white background or white

text or graphics, or both, on black background, unless the secretary of state approves other high-contrast color combinations that do not require color perception.

(f) Any voting system that requires any visual perception shall allow the font size as it appears to the voter to be set from a minimum of fourteen points to a maximum of twenty-four points before the voting system is delivered to the polling place.

(g) The voting system shall provide audio information, including any audio output using synthetic or recorded human speech or any auditory feedback tones that are important for the use of the audio approach, through at least one mode, by handset or headset, at high volume and shall provide incremental volume control with output amplification up to a level of at least ninety-seven decibel sound pressure level.

(h) For voice signals transmitted to the elector, the voting system shall provide a gain adjustable up to a minimum of twenty decibels with at least one intermediate step of twelve decibels.

(i) If the voting system can exceed one hundred twenty decibel sound pressure level, a mechanism shall be included to reset the volume automatically to the voting system's default volume level after every use, such as when the handset is replaced, but not before. Universal precautions in the use and sharing of headsets should be followed.

(j) If sound cues and audible information such as "beeps" are used, simultaneous corresponding visual cues and information shall be provided.

(k) Controls and mechanisms shall be operable with one hand, including with a closed fist, and operable without tight grasping, pinching, or twisting of the wrist.

(l) The force required to operate or activate the controls may not exceed five pounds of force.

(m) Voting booths shall have voting controls at a minimum height of thirty-six inches above the finished floor with a minimum knee clearance of twenty-seven inches high, thirty inches wide, and nineteen inches deep, or the accessible voter interface devices shall be designed so as to allow their use on top of a table to meet such requirements. Tabletop installations shall ensure adequate privacy.

(n) Audio ballots shall meet the following standards:

(I) After the initial instruction from an election official, the elector shall be able to independently operate the voter interface device through the final step of casting a ballot without assistance.

(II) The elector shall be able to determine the offices for which the elector is allowed to vote and to determine the candidates for each office.

(III) The elector shall be able to determine how many candidates may be selected for each office.

(IV) The elector shall have the ability to verify that the physical or vocal inputs given to the voting system have selected the candidates that the elector intended to select.

(V) The elector shall be able to review the candidate selections that the elector has made.

(VI) Before casting the ballot, the elector shall have the opportunity to change any selections previously made and confirm a new selection.

(VII) The voting system shall communicate to the elector the fact that the elector has failed to vote for an office or has failed to vote the number of allowable candidates for an office and require the elector to confirm his or her intent to undervote before casting the ballot.

(VIII) The voting system shall warn the elector of the consequences of overvoting for an office.

(IX) The elector shall have the opportunity to input a candidate's name for each office that allows a write-in candidate.

(X) The elector shall have the opportunity to review the elector's write-in input to the voter interface device, edit that input, and confirm that the edits meet the elector's intent.

(XI) The voting system shall require a clear, identifiable action from the elector to cast the ballot. The voting system shall explain to the elector how to take this action so that the elector has minimal risk of taking the action accidentally, but when the elector intends to cast the ballot, the action can be easily performed.

(XII) After the ballot is cast, the voting system shall confirm to the elector that the ballot has been cast and the elector's process of voting is complete.

(XIII) After the ballot is cast, the voting system shall prevent the elector from modifying the ballot cast or voting another ballot.

(o) Ballot marking devices shall meet the following standards:

(I) The elector shall be able simultaneously to view ballot choices on a high-resolution visual display and to listen to ballot choices with headphones.

(II) The elector shall be able to listen to ballot choices in complete privacy and to turn off the visual display.

(III) The ballot marking device shall have multiple output connections to accommodate various headsets so that the elector is able to use the headset provided with the ballot marking device or his or her own headset.

(IV) The elector shall be able to mark the ballot card in complete independence and in accordance with federal and state law on mandatory accessibility for persons with disabilities.

(V) The ballot marking device shall allow a blind or visually impaired elector to vote in complete privacy.

(VI) The ballot marking device shall have a completely integrated input keypad containing commonly accepted voter accessibility keys with Braille markings.

(VII) The elector shall be able to enter ballot choices using an assistive device, including but not limited to a sip and puff device and a jelly switch.

(VIII) The elector shall be able to magnify the ballot choices on the visual display and to adjust the volume and speed of the audio output.

(IX) The ballot marking device shall have multiple language capability.

(X) The elector shall have the opportunity to input a candidate's name for each office that allows a write-in candidate and to review the elector's write-in input, edit that input, and confirm that the edits meet the elector's intent.

(XI) The elector shall be able independently to review all ballot choices and make corrections before the ballot card is marked, including by receiving a replacement ballot if the elector is otherwise unable to change the ballot or correct an error.

(XII) The elector shall be able to verify, visually or using the audio interface, that the ballot card inserted into the device at the start of voting is blank and that the marked ballot card produced by the ballot marking device is marked as the elector intended.

(XIII) The ballot marking device shall alert the elector before the ballot is marked that the elector has made an overvote, as defined in section 1-1-104 (23.4), or an undervote, as defined in section 1-1-104 (49.7), and allow the elector to make corrections.

Source: L. 2004: Entire part added, p. 1355, § 15, effective May 28. L. 2007: (1)(o) amended, p. 1975, § 19, effective August 3.

Editor's note: Subsection (1)(o) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-5-705. Accessible voter interface devices - minimum requirement. (1) A voting system shall include at least one direct recording electronic voting system specially equipped for individuals with disabilities or other accessible voter interface device installed at each polling place that meets the requirements of this section.

(2) This section shall apply to elections held on and after January 1, 2006.

Source: L. 2004: Entire part added, p. 1357, § 15, effective May 28.

PART 8

VOTER-VERIFIED PAPER RECORD

1-5-801. Acquisition of voting systems - voter-verified paper record. (1) On and after June 6, 2005, a political subdivision shall not acquire a voting system unless the voting system is capable of producing a voter-verified paper record of each elector's vote.

(2) A political subdivision shall not acquire a voting device that has been retrofitted to comply with this part 8 unless the voting device has been certified by an independent testing authority and the secretary of state.

Source: L. 2005: Entire part added, p. 1402, § 22, effective June 6; entire part added, p. 1438, § 22, effective June 6.

1-5-802. Use of voting systems - voter-verified paper record. (1) In addition to the other requirements of this article, the voting system used in each primary, general, coordinated, or congressional district vacancy election held in the state on and after January 1, 2010, shall have the capability to produce a voter-verifiable paper record of each elector's vote. Before an elector's vote is cast, the elector shall have the opportunity, in private and without assistance, to inspect and verify that the voter-verified paper record correctly reflects the elector's choices.

(2) The requirements of subsection (1) of this section shall apply to each primary, general, coordinated, or congressional district vacancy election conducted by a county clerk and recorder on and after January 1, 2008, if the governing body of the county determines that:

(a) The technology necessary to comply with the requirements of subsection (1) of this section is available; and

(b) (I) Sufficient federal or state funds are available to acquire or retrofit voting devices that comply with the requirements of subsection (1) of this section; or

(II) It is otherwise financially feasible for the county to comply with the requirements of subsection (1) of this section.

(3) Upon satisfaction by a county of the requirements of this section, the voter-verified paper record of each eligible elector's vote, whether filled out by hand or produced by a voting machine or ballot marking device, shall be preserved as an election record pursuant to section 1-7-802 and shall constitute an official record of the election.

(4) No voting device shall be remotely accessed or remotely accessible until after the close of voting and a results total tape has been printed, as applicable.

Source: L. 2005: Entire part added, p. 1403, § 22, effective June 6; entire part added, p. 1438, § 22, effective June 6.

ARTICLE 6

Election Judges

Editor's note: This article was numbered as article 15 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactments are shown in editor's notes following each section.

1-6-101.	Definitions - qualifications for election judges - student election judges - legislative declaration.	1-6-109.5.	Appointment and duties of supply judge.
1-6-102.	List furnished by precinct committee persons.	1-6-110.	Judges at primary elections. (Repealed)
1-6-103.	Recommendations by county chairperson.	1-6-111.	Number of election judges.
1-6-103.5.	Recommendations by minor political parties.	1-6-112.	Number of judges in nonpartisan elections. (Repealed)
1-6-103.7.	Unaffiliated voters - self-nomination.	1-6-113.	Vacancies.
1-6-104.	Appointment of election judges by the county clerk and recorder and designated election officials.	1-6-114.	Oath of judges.
1-6-105.	Appointment of election judges for elections not coordinated by the county clerk and recorder.	1-6-115.	Compensation of judges.
1-6-106.	Confirmation and acceptance of election judge appointment.	1-6-116.	Delivery of election returns and other election papers - compensation. (Repealed)
1-6-107.	Acceptances - school of instruction - appointment of supply judge. (Repealed)	1-6-117.	Judges for new or changed precincts. (Repealed)
1-6-108.	Lists of election judges.	1-6-118.	Judges may change polling place. (Repealed)
1-6-109.	Party affiliation of election judges in partisan elections.	1-6-119.	Removal of election judge by designated election official.
		1-6-120.	Removal of election judges by the court.
		1-6-121.	Election judge vacancies. (Repealed)
		1-6-122.	State employees - leave to serve as election judge.

1-6-101. Definitions - qualifications for election judges - student election judges - legislative declaration. (1) As used in this article, "election judge" means a registered elector appointed by the county clerk and recorder or designated elected official to perform the election duties assigned by the county clerk and recorder or designated election official. As used in this article, "election judge" also includes a student election judge appointed pursuant to the provisions of subsection (7) of this section.

(2) The persons appointed as election judges, except for persons appointed as student election judges pursuant to the provisions of subsection (7) of this section, shall certify in writing that they meet the following qualifications:

(a) They are registered electors who reside in the political subdivision, unless otherwise excepted, and are willing to serve;

(b) They are physically and mentally able to perform and complete the assigned tasks;

(c) They will attend a class of instruction concerning the tasks of an election judge prior to each election;

(d) They have never been convicted of election fraud, any other election offense, or fraud; and

(e) They are neither a candidate whose name appears on the ballot in the precinct that they are appointed to serve nor a member of the immediate family, related by blood or marriage to the second degree, of a candidate whose name appears on the ballot in the precinct that they are appointed to serve.

(3) With regard to any nonpartisan election that is not coordinated by the county clerk and recorder, the election judge shall be a registered elector of the political subdivision for which the election is being held. If enough registered electors of the political subdivision are not available, then the appointing authority may appoint election judges who are registered electors of the state.

(4) Before serving as an election judge, any person recommended as an election judge in accordance with section 1-6-102, 1-6-103, 1-6-103.5, or 1-6-103.7 shall complete and file an acceptance form with the county clerk and recorder or other designated election official as provided in section 1-6-106. The acceptance forms may be kept on file with the county clerk and recorder or other designated election official for up to two years from the date of signing the acceptance form.

(5) The county clerk and recorder or the designated election official shall hold a class of instruction concerning the tasks of an election judge and a special school of instruction concerning the task of a supply judge not more than forty-five days prior to each election.

(6) Each person appointed as an election judge shall be required to attend one class of instruction prior to the first election in an election cycle in which the person will serve as an election judge. The county clerk and recorder or other designated election official may require a person appointed as an election judge to attend more than one class of instruction in an election cycle.

(7) (a) The general assembly hereby finds and declares that, in order to promote a greater awareness among young people concerning the electoral process, the rights and responsibilities of voters, and the importance of citizen participation in public affairs, as well as to provide additional qualified individuals willing and able to assist with the electoral process, qualified students may be allowed to serve as student election judges. Therefore, it is the intent of the general assembly in enacting this subsection (7) to authorize county clerk and recorders to appoint qualified students to serve as election judges in conformity with the requirements of this section.

(b) As used in this article, "student election judge" means a student who meets the requirements of this subsection (7) and who is appointed by a county clerk and recorder for service as an election judge pursuant to the requirements of this section.

(c) The county clerk and recorders may work with school districts and public or private secondary educational institutions to identify students willing and able to serve as student election judges. Such school districts or educational institutions may submit the names of the students to the clerk and recorder of the county in which the school district or educational institution is located for appointment as student election judges. Home-schooled students may apply to the county clerk and recorder for appointment as a student election judge pursuant to the requirements of this section. From among the names submitted, the county clerk and recorders may select students to serve as student election judges who meet the following qualifications:

(I) They are a United States citizen or will be a citizen at the time of the election to which the student is serving as a student election judge;

(II) They are willing to serve;

(III) They are physically and mentally able to perform and complete the assigned tasks;

(IV) They will attend a class of instruction concerning the tasks of an election judge prior to each election;

(V) They have never been convicted of election fraud, any other election offense, or fraud;

(VI) They are not a member of the immediate family, related by blood or marriage to the second degree, of a candidate whose name appears on the ballot in the precinct that they are appointed to serve;

(VII) They are sixteen years of age or older and either a junior or senior in good standing attending a public or private secondary educational institution or being home-schooled at the time of the election to which the student is serving as a student election judge; and

(VIII) Their parent or legal guardian has consented to their service as a student election judge.

Source: **L. 92:** Entire article R&RE, p. 723, § 8, effective January 1, 1993. **L. 93:** IP(1) amended and (3) and (4) added, p. 1414, § 58, effective July 1. **L. 96:** (1)(d) and (2) amended, p. 1744, § 38, effective July 1. **L. 98:** Entire section amended, p. 574, § 1, effective April 30. **L. 2000:** (1) and IP(2) amended and (7) added, p. 1333, § 1, effective July 1. **L. 2002:** (4) and (6) amended, p. 1631, § 8, effective June 7. **L. 2005:** (5) amended, p. 1403, § 23, effective June 6; (5) amended, p. 1438, § 23, effective June 6. **L. 2007:** (5) amended, p. 1977, § 20, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-107 and 1-5-109 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-106 and 1-3-108 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (5) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For transferring names of electors when precinct boundaries changed, see § 1-2-223; for the power of the board of county commissioners to form new precincts, change the names of precincts, or reduce the numbers of precincts, see § 30-11-114.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 86-92.

C.J.S. See 29 C.J.S., Elections, § 114.

Annotator's note. The following annotations are taken from cases decided under former provisions similar to this section.

Judicial notice taken of boundaries of election precincts. Courts take judicial notice of matters of common knowledge in the community where they sit, such as the boundaries of election precincts. *Israel v. Wood*, 93 Colo. 500, 27 P.2d 1024 (1933). *Nat'l Optical Co. v. United States Fid. & Guar. Co.*, 77 Colo. 130, 235 P. 343 (1925); *Antlers Athletic Ass'n v. Hartung*, 85 Colo. 125, 274 P. 831 (1928).

And a court will take judicial notice of the fact that there has been a precinct established in a county, it not being material whether the precinct was established upon proper petition or by virtue of authority so to do under this section. *Bd. of Comm'rs v. People ex rel. McPherson*, 36 Colo. 246, 91 P. 36 (1906).

Whereupon a mandamus proceeding will be dismissed. When a court takes judicial notice that an election precinct has been established, a mandamus proceeding to compel the board of county commissioners to establish such precinct pending upon review in such court will be dismissed, there being no live question for determination. *Bd. of Comm'rs v. People ex rel. McPherson*, 36 Colo. 246, 91 P. 36 (1906).

1-6-102. List furnished by precinct committeepersons. (1) No later than ten days after the precinct caucus in even-numbered years, the committeepersons of each precinct from each major political party shall submit to the county chairpersons of their respective political parties a list that was initiated at the precinct caucus and that recommends registered electors as election judges. The registered electors recommended as election judges must reside in the precinct and have a current affiliation with the political party that held the precinct caucus.

(2) If there is no county chairperson, the committeeperson of each precinct shall submit the list that was initiated at the precinct caucus and that recommends registered electors as election judges directly to the county clerk and recorder. If a precinct has no committeeperson, the district captain, if any, shall submit the list of recommended election judges to the county chairperson or county clerk and recorder, as appropriate.

Source: **L. 92:** Entire article R&RE, p. 723, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 575, § 2, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 89.

1-6-103. Recommendations by county chairperson. (1) (a) No later than the last Tuesday of April in even-numbered years, the county chairperson of each major political party in the county shall certify to the county clerk and recorder the names and addresses of registered electors recommended to serve as election judges for each precinct in the county.

(b) Repealed.

(2) The county chairperson, or, if there is no county chairperson, the committeepersons who submitted the list of registered electors in accordance with section 1-6-102 (2) shall designate the order of preference of the names of the registered electors recommended to serve as election judges for each precinct. The county clerk and recorder shall select election judges from each precinct list in the county chairperson's, or, if there is no county chairperson, the committeeperson's, order of preference.

(3) In recommending registered electors as election judges, the county chairperson may select only names from the list submitted by the precinct committeepersons. However, the county chairperson may recommend additional registered electors to the county clerk and recorder if the precinct committeepersons do not provide enough names to the county chairperson.

(4) and (5) (Deleted by amendment, L. 98, p. 576, § 3, effective April 30, 1998.)

Source: L. 92: Entire article R&RE, p. 724, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 576, § 3, effective April 30. **L. 2002:** (1) amended, p. 134, § 6, effective March 27.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2002. (See L. 2002, p. 134.)

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 89.

C.J.S. See 29 C.J.S., Elections, § 118.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section applies to municipal elections. The right of the elector to be safeguarded in the exercise of his franchise - a right conferred by the sovereign authority of the state - carries with it the corresponding duty, on the part of the state, to furnish all needed protection; this is of public concern, therefore, even municipal elections are within the provisions of this section requiring the county chairman to submit a list of names to serve as election

judges. *Mauff v. People ex rel. Clay*, 52 Colo. 562, 123 P. 101 (1912) (decided under former law).

Requirement that persons serving as election judges must be affiliated with one of two major political parties does not violate right to freedom of speech and association or right to equal protection since the statute is rationally related to the legitimate ends of efficiently running an election by pairing Democrats and Republicans as election monitors to provide the appearance of propriety. *MacGuire v. Houston*, 717 P.2d 948 (Colo. 1986).

Applied in *Nichol v. Bair*, 626 P.2d 761 (Colo. App. 1981).

1-6-103.5. Recommendations by minor political parties. No later than the last Tuesday of April in even-numbered years, the county chairperson or other authorized official of a minor political party may certify to the county clerk and recorder the names and addresses of registered electors recommended to serve as election judges for one or more precincts in the county. If the list contains more than one name for any precinct in the county, the order of preference shall be indicated. The

county clerk and recorder shall select election judges from the party according to such order of preference, if indicated.

Source: L. 2002: Entire section added, p. 1631, § 9, effective June 7.

1-6-103.7. Unaffiliated voters - self-nomination. No later than the last Tuesday of April in even-numbered years, any registered elector who is unaffiliated with a political party or political organization may give notice in writing to the clerk and recorder of the county in which such elector resides offering to serve as an election judge and stating that the elector is a registered elector and is unaffiliated with any political party or political organization.

Source: L. 2002: Entire section added, p. 1631, § 9, effective June 7.

1-6-104. Appointment of election judges by the county clerk and recorder and designated election officials. (1) For each election coordinated by the county clerk and recorder, the county clerk and recorder shall appoint election judges for each precinct in the county. An election judge for a precinct shall serve for a two-year period beginning on the last Tuesday of May in even-numbered years and ending on the last Monday in May of the next even-numbered year or until the designated election official appoints another person to replace that election judge for that precinct, whichever is earlier.

(2) The county clerk and recorder may appoint an election judge to serve in a precinct of the county other than the precinct in which the election judge resides.

(3) If, at the time the county clerk and recorder appoints election judges for a precinct, the list of recommended election judges submitted in accordance with section 1-6-102 contains an insufficient number of names for a major political party's share of the total number of election judges as required in section 1-6-109, the designated election official shall appoint any additional election judges necessary from among the persons recommended by minor political parties in accordance with section 1-6-103.5 and the unaffiliated voters who have offered to serve as election judges in accordance with section 1-6-103.7.

(4) For each election coordinated by the county clerk and recorder, the county clerk and recorder may appoint one or more student election judges that satisfy the requirements contained in section 1-6-101 (7) to serve as an election judge, and shall designate the precinct in which the student election judge shall serve based upon the number of qualified students and vacancies in the number of available positions for election judges throughout the county, notwithstanding the fact that a student election judge may serve in a precinct of the county other than the precinct in which the student election judge resides.

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 576, § 4, effective April 30. **L. 99:** (3) amended, p. 161, § 13, effective August 4. **L. 2000:** (4) added, p. 1334, § 2, effective July 1. **L. 2002:** (3) amended, p. 1632, § 10, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For removal of election judges, see §§ 1-6-119 and 1-6-120.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 86-92.

C.J.S. See 29 C.J.S., Elections, § 114.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Election judges have both judicial and ministerial duties to perform. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

Such judicial conclusions are not subject to review by mandamus. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

And the actual count and determination of election results is a duty of election judges, and their disposition of disputes as to count or the result of a ballot is

judicial. *People ex rel. Griffith v. Bundy*, 107 Colo. 102, 109 P.2d 261 (1940).

1-6-105. Appointment of election judges for elections not coordinated by the county clerk and recorder. (1) Except as provided for special district elections in subsection (1.5) of this section, no later than forty-five days before the regular election, the governing body with authority to call elections shall appoint election judges for the political subdivision. The term of office of election judges shall be two years from the date of appointment.

(1.5) No later than forty-five days before a regular special district election, the designated election official shall appoint election judges for the special district unless otherwise directed by the board of directors of such district.

(2) Any person who has been appointed by a county clerk and recorder and meets the qualifications as prescribed in section 1-6-101 may be appointed as an election judge for elections not coordinated by the county clerk and recorder.

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 577, § 5, effective April 30. **L. 99:** (1) amended and (1.5) added, p. 451, § 7, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-106. Confirmation and acceptance of election judge appointment. (1) The designated election official shall confirm the appointments of election judges by mailing each appointed election judge a certification of appointment and an acceptance form.

(2) The acceptance form shall contain:

(a) The statement of qualifications as prescribed in section 1-6-101; and

(b) A statement that, if the person appointed as an election judge either fails to file the acceptance form within seven days after the certification of appointment and acceptance form are mailed or fails to attend a class of instruction as required in section 1-6-101 (5), the designated election official may determine that a vacancy has been created.

(3) Each person appointed as an election judge shall file an acceptance form in the office of the designated election official within seven days after the certification of appointment and acceptance form have been mailed. If a person appointed as an election judge fails to file the acceptance form as described in subsection (2) of this section or fails to attend a class of instruction as required in section 1-6-101 (5), the designated election official may determine that a vacancy has been created.

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 577, § 6, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-107. Acceptances - school of instruction - appointment of supply judge. (Repealed)

Source: L. 92: Entire article R&RE, p. 725, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 584, § 19, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-109 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were

similar to those contained in 1-3-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-108. Lists of election judges. (1) The designated election official shall make and maintain a master list of election judges who have filed an acceptance form in accordance with section 1-6-101 (4). The master list shall include the name, affiliation, and precinct number of each election judge who has filed an acceptance form, including whether such judge is unaffiliated, affiliated with a minor political party, or affiliated with a qualified political organization.

(2) Any person may obtain, upon written request and payment of the appropriate fee, an exact copy of the list of county election judges from the county clerk and recorder.

Source: L. 92: Entire article R&RE, p. 726, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 578, § 7, effective April 30. **L. 99:** (1) amended, p. 161, § 14, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-109. Party affiliation of election judges in partisan elections. (1) For partisan elections in precincts that have an even number of election judges, each major political party is entitled to one-half of the number of election judges.

(2) For partisan elections in precincts that have an odd number of election judges, one major political party is entitled to the extra election judge in one-half of the precincts, as determined by the county clerk and recorder, and the other major political party is entitled to the extra election judge in the other one-half of the precincts, as determined by the county clerk and recorder.

(3) If an odd number of precincts exist, the county clerk and recorder shall determine which major political party is entitled to any extra election judge. The county clerk and recorder shall make this determination either by mutual agreement of both of the major political parties or, if the two major political parties cannot agree, by lot.

(4) Repealed.

Source: L. 92: Entire article R&RE, p. 726, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 578, § 8, effective April 30. **L. 2002:** (4) repealed, p. 1642, § 39, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 86-92. **C.J.S.** See 29 C.J.S., Elections, §§ 118, 119.

1-6-109.5. Appointment and duties of supply judge. (1) The designated election official shall appoint one election judge in each precinct as supply judge. To the extent possible, the supply judge shall be from a major political party. The designated election official shall notify the supply judge of the appointment.

(2) For partisan elections, each major political party is entitled to one-half of the total number of supply judges appointed. If an odd number of supply judges is appointed, the county clerk and recorder shall determine which major political party is entitled to the one extra supply judge. The county clerk and recorder shall make this determination by the mutual agreement of the two major political parties or, if the two major political parties cannot agree, by lot.

(3) Prior to the election, the supply judge shall attend a special school of instruction held by the designated election official.

(4) (a) The supply judge shall coordinate the conduct of the election in the precinct. For nonpartisan elections, the supply judge's responsibilities shall include receiving election supplies and equipment from the designated election official, delivering election supplies and equipment to the polling place, and returning all election supplies, election equipment, and ballots to the designated election official once the election is concluded.

(b) For partisan elections, the county clerk and recorder may deputize a courier to return the election supplies, election equipment, and ballots to the county clerk and recorder once the election is concluded. If the county clerk and recorder does not deputize a courier, the supply judge and a second election judge from the precinct shall return the election supplies, election equipment, and the ballots to the county clerk and recorder. The second election judge shall be selected by the election judges in the precinct other than the supply judge and shall be of a political affiliation different than the supply judge.

Source: L. 98: Entire section added, p. 579, § 9, effective April 30.

1-6-110. Judges at primary elections. (Repealed)

Source: L. 92: Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 584, § 20, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-15-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-111. Number of election judges. (1) For partisan elections, the county clerk and recorder shall appoint at least three election judges to serve as polling place judges for each precinct to perform the designated functions, one of whom may be a student election judge appointed pursuant to the provisions of section 1-6-101 (7). In each precinct, notwithstanding any other provision of this article and subject to the availability of election judges who meet the affiliation requirements of section 1-6-109, of the election judges appointed to serve as polling place judges pursuant to the provisions of this subsection (1), there shall be at least one election judge from each major political party who is not a student election judge.

(2) (Deleted by amendment, L. 98, p. 580, § 10, effective April 30, 1998.)

(3) When two election judges who are not of the same political affiliation are present at the polls, voting may proceed.

(4) For nonpartisan elections, the designated election official shall appoint no less than two election judges to serve as polling place judges for each precinct to perform the designated functions.

(5) The designated election official and, for partisan elections, the county clerk and recorder may appoint other election judges as needed to perform duties other than polling place duties. These duties may include but are not limited to inspecting ballots, duplicating ballots, and counting paper ballots. For partisan elections, if the county clerk and recorder appoints election judges to perform duties other than polling place duties, the county clerk and recorder shall appoint two election judges to perform such duties. The two election judges so appointed shall not be of the same political affiliation.

(6) For any election in which polling places or precincts are combined or vote centers are established in accordance with section 1-5-102.7, the county clerk and recorder or the designated election official may assign one set of election judges to perform the functions for all precincts and polling places so combined or for each vote center. The number of student election judges assigned to a combined polling place or vote center shall not exceed the number of election judges assigned to the combined polling place or vote center who are not student election judges.

(7) Where student election judges have been appointed by the county clerk and recorder to serve in a particular precinct pursuant to the provisions of this article, no more than two such student election judges shall serve as election judges in any one precinct.

(8) Subject to the requirements of this article regarding the number and party affiliation of election judges, the county clerk and recorder or designated election official may allow an election judge to work at a polling place for a shift lasting less than the entire day; except that, at least two judges of different affiliations at each polling place shall work the entire day.

Source: **L. 92:** Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 98:** Entire section amended, p. 580, § 10, effective April 30. **L. 2000:** (1) amended and (7) added, p. 1335, § 3, effective July 1. **L. 2004:** (6) amended, p. 1106, § 5, effective May 27. **L. 2007:** (6) amended and (8) added, p. 1977, § 21, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-104 and 1-5-105 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-102 and 1-3-103 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsections (6) and (8) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-6-112. Number of judges in nonpartisan elections. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 584, § 21, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-104 and 1-5-105 as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-102 and 1-3-103 as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-113. Vacancies. (1) If for any reason any person selected to serve as an election judge fails to attend the class of instruction for election judges, or refuses, fails, or is unable to serve, or is removed by preemption in accordance with section 1-6-119 (1) or for cause in accordance with section 1-6-119 (2), the designated election official thereafter may appoint an election judge to fill such vacancy. For a partisan election, an election judge shall be appointed to fill such vacancy from the list of names previously submitted by the county chairperson of the political party to which the person belongs. If a vacancy occurs in a partisan election and no persons are available from such list, then the county clerk and recorder may appoint a person from among the persons recommended by minor political parties in accordance with section 1-6-103.5 and the unaffiliated voters who have offered to serve as election judges in accordance with section 1-6-103.7.

(2) If any election judge is not present at the opening of the polls but appears at the polling place within thirty minutes after the opening of the polls, that election judge is entitled to serve as an election judge, and in such event the election judges shall make note of this fact in their official returns. If a vacancy occurs on the date of any election by failure of any election judge to appear at the polling place by 7:30 a.m., the vacancy may be filled by the designated election official.

Source: **L. 92:** Entire article R&RE, p. 727, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1415, § 59, effective July 1. **L. 2002:** (1) amended, p. 1632, § 11, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-110 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 114.

1-6-114. Oath of judges. (1) Before beginning the duties of an election judge, each person appointed as an election judge shall take a self-affirming oath or affirmation in substantially the following form:

"I,, do solemnly swear (or affirm) that I am a citizen of the United States and the state of Colorado; that I am an eligible elector who resides in the county of or within the political subdivision; that I am a member of the party (or that I am unaffiliated with a political party) as shown on the registration books of the county clerk and recorder; that I will perform the duties of judge according to law and the best of my ability; that I will studiously strive to prevent fraud, deceit, and abuse in conducting the same; that I will not try to determine how any elector voted, nor will I disclose how any elector voted if in the discharge of my duties as judge such knowledge shall come to me, unless called upon to disclose the same before some court of justice; that I have never been convicted of election fraud, any other election offense, or fraud and that, if any ballots are counted before the polls close on the date of the election, I will not disclose the result of the votes until after the polls have closed and the results are formally announced by the designated election official."

(2) (Deleted by amendment, L. 95, p. 838, § 54, effective July 1, 1995.)

(3) For nonpartisan elections, the election judges shall not be required to declare their affiliation on the oath or affirmation.

Source: L. 92: Entire article R&RE, p. 728, § 8, effective January 1, 1993. L. 93: (1) amended, p. 1415, § 60, effective July 1. L. 95: (1) and (2) amended, p. 838, § 54, effective July 1. L. 98: (1) amended, p. 580, § 11, effective April 30. L. 99: (3) amended, p. 162, § 15, effective August 4. L. 2002: (1) amended, p. 1632, § 12, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-111 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 105.

1-6-115. Compensation of judges. (1) In all elections, including primary and general elections, each election judge serving in the precincts on election day shall receive not less than five dollars as compensation for services provided as judge at any election. At the discretion of the county clerk and recorder or designated election official, a student election judge appointed pursuant to the provisions of this article may receive the same compensation received by an election judge but, in any case, not less than seventy-five percent of the compensation received by an election judge for service provided as a judge at any election.

(2) In addition to the compensation provided by subsection (1) of this section, each election judge and student election judge may be paid expenses and reasonable compensation for attending election schools which may be established by the county clerk and recorder or the designated election official. Each supply judge appointed by the county clerk and recorder shall be reimbursed no less than five dollars for attending a special school of instruction.

(2.5) The supply judge and, for partisan elections, the second election judge selected in accordance with section 1-6-109.5 (4) (b) shall be paid no less than four dollars for returning the election supplies, election equipment, and the ballots to the designated election official. The person providing the transportation may be paid a mileage allowance, to be set by the designated election official but not to

exceed the mileage rate authorized for county officials and employees, for each mile necessarily traveled in excess of ten miles in going to and returning from the office of the designated election official.

(3) Compensation for election judges shall be determined and paid by the governing body calling the election. Compensation for all judges shall be uniform throughout a particular political subdivision, except the compensation of student election judges shall be set in conformity with subsection (1) of this section.

(4) Election judges must give the designated election officials their social security numbers in order to receive compensation; however, service as an election judge shall not be considered employment pursuant to articles 70 to 82 of title 8, C.R.S.

Source: **L. 92:** Entire article R&RE, p. 728, § 8, effective January 1, 1993. **L. 93:** (2) amended, p. 1416, § 61, effective July 1. **L. 95:** (1) amended, p. 839, § 55, effective July 1. **L. 98:** (1) and (2) amended and (2.5) added, p. 581, § 12, effective April 30. **L. 2000:** (1), (2), and (3) amended, p. 1335, § 4, effective July 1. **L. 2002:** (1) amended, p. 1633, § 13, effective June 7. **L. 2006:** (1) amended, p. 48, § 1, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-112 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the mileage rate authorized for county officers and employees, see § 30-11-107 (1)(t).

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 106.

1-6-116. Delivery of election returns and other election papers - compensation. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 729, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1416, § 62, effective July 1. **L. 94:** (1) amended, p. 1162, § 32, effective July 1. **L. 98:** Entire section repealed, p. 585, § 22, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-113 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-117. Judges for new or changed precincts. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 729, § 8, effective January 1, 1993. **L. 98:** Entire section repealed, p. 585, § 23, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-114 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-3-115 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-118. Judges may change polling place. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 729, § 8, effective January 1, 1993. **L. 93:** (1) amended, p. 1416, § 63, effective July 1. **L. 98:** Entire section repealed, p. 585, § 24, effective April 30.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-5-115 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-4-202 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-119. Removal of election judge by designated election official. (1) If a county chairperson of a major political party or the county chairperson or other authorized official of a minor political party believes that an election judge appointed to represent that party is not faithfully or fairly representing the party or that an election judge has moved from the county, the county chairperson or authorized official may exercise a preemptive removal of the election judge. The county chairperson or authorized official shall notify the county clerk and recorder and the election judge of the preemptive removal in writing. The county clerk and recorder shall fill any vacancy created by the preemptive removal as provided in section 1-6-113.

(2) Prior to election day, the designated election official may remove an election judge for cause. Cause includes but is not limited to the election judge's failure to file an acceptance form in accordance with sections 1-6-101 and 1-6-106 and the election judge's failure to attend a class of instruction as required in section 1-6-101 (5).

(3) On election day, the designated election official may remove an election judge who has neglected the duties of the office by failing to appear at the polling place by 7:30 a.m., by leaving the precinct polling place before completing all of the duties assigned, by being unable or unwilling or by refusing to perform the duties of the office, or by electioneering.

(4) Upon receipt of a written complaint made by an eligible elector of the political subdivision concerning an election judge, the designated election official shall investigate the complaint and may remove the election judge and appoint another election judge in accordance with section 1-6-113.

Source: L. 92: Entire article R&RE, p. 730, § 8, effective January 1, 1993. **L. 95:** (3) amended, p. 839, § 56, effective July 1. **L. 98:** Entire section amended, p. 581, § 13, effective April 30. **L. 2002:** (1) and (4) amended, p. 1633, § 14, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-116 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 120-122.

1-6-120. Removal of election judges by the court. (1) Upon the failure or neglect of any election judge to perform the duties of the office, any other election judge, the designated election official, the county chairperson of a political party, or an eligible elector of the political subdivision for which the election judge is appointed, having knowledge of the failure or neglect, shall cause proper action for removal to be instituted against the election judge.

(2) Election judges who neglect their duties, who commit, encourage, or connive in any fraud in connection with their duties, who violate any of the election laws or knowingly permit others to do so, who are convicted of any crime, who violate their oath, who wrongfully hamper or interfere or tend to interfere with the regular performance of the duties of the other election judges, who commit any other act that interferes or tends to interfere with a fair and honest registration and election, or who are not appointed in accordance with the provisions of this article may be removed in the following manner:

(a) Any eligible elector may file a brief petition in the district court at any time up to twelve days before any election, setting out in brief and concise language the facts constituting the cause for the removal of the election judge. The petition shall be verified, but the verification may be upon information and belief. Upon filing of the petition, the court shall issue a citation to the election judge directing an appearance within forty-eight hours to answer the petition if the election judge desires to do so.

(b) The court shall proceed summarily to hear and finally dispose of the petition and may set a hearing within forty-eight hours after the answer is filed. Evidence given by any accused election judge

at the hearing shall not be used against that election judge in any civil, criminal, or other proceedings. If the court decides that the election judge should be removed for any cause stated in the petition, the court shall so order and shall immediately notify the appropriate election official.

(3) The validity of any part of the registration or election already completed or other acts performed under this code, if otherwise legally performed, shall not be affected by the removal of an election judge and shall be in every respect valid and regular. The successor of any election judge removed shall proceed with the duties of the election judge with the same power and effect as though originally appointed.

Source: L. 92: Entire article R&RE, p. 730, § 8, effective January 1, 1993. L. 95: (2)(a) amended, p. 839, § 57, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-5-117 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-12-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-6-121. Election judge vacancies. (Repealed)

Source: L. 98: Entire section added, p. 582, § 14, effective April 30. L. 2002: Entire section repealed, p. 1642, § 39, effective June 7.

1-6-122. State employees - leave to serve as election judge. (1) An employee of a state agency, as defined in section 24-18-102 (9), C.R.S., shall be entitled to take administrative leave with pay on election day for the purpose of serving as an election judge, unless the employee's supervisor determines that the employee's attendance at work on election day is essential.

(2) An employee of a state agency who takes administrative leave with pay to serve as an election judge in accordance with this section shall not receive compensation pursuant to section 1-6-115.

(3) An employee of a state agency who serves as an election judge in accordance with this section shall submit to the employee's supervisor evidence of service as an election judge.

Source: L. 2006: Entire section added, p. 2032, § 12, effective June 6.

ARTICLE 7

Conduct of Elections

Editor's note: This article was numbered as article 14 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactments are shown in editor's notes following each section.

Cross references: For election offenses relating to conduct of elections, see part 7 of article 13 of this title.

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PART 7

PART 1

HOURS OF VOTING, REGISTRATION, OATHS, AND ASSISTANCE TO VOTE

1-7-101. Hours of voting. (1) All polls shall be opened continuously from 7 a.m. until 7 p.m. of each election day. If a full set of election judges is not present at the hour of 7 a.m. and it is necessary for judges to be appointed to conduct the election as provided in section 1-6-113 (2), the election may commence when two judges who are not of the same political affiliation for partisan elections are present at any hour before the time for closing the polls. The polls shall remain open after 7 p.m. until every

DELIVERY OF ELECTION RETURNS

- 1-7-701. Delivery of election returns, ballot boxes, and other election papers.

PART 8

PRESERVATION OF BALLOTS AND ELECTION RECORDS

- 1-7-801. Ballots preserved.
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PART 9

BALLOT ISSUE NOTICES

- 1-7-901. Receipt of comments concerning ballot issues.
- 1-7-902. Preparation of fiscal information.
- 1-7-903. Preparation of written comments.
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- 1-7-905. Preparation of notices.
- 1-7-905.5. Form of notice.
- 1-7-906. Mailing of notices.
- 1-7-907. Ballot issue notice.
- 1-7-908. Additional notice - election to create financial obligation.

eligible elector who was at the polling place at or before 7 p.m. has been allowed to vote. Any person arriving after 7 p.m. shall not be entitled to vote.

(2) Upon the opening of the polls, a proclamation shall be made by one of the judges that the polls are open, and, thirty minutes before the closing of the polls, a proclamation shall be made that the polls will close in thirty minutes.

Source: L. 92: Entire article R&RE, p. 731, § 9, effective January 1, 1993. L. 98: (1) amended, p. 583, § 17, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the date of general and primary elections, see § 1-1-104 (17) and (32).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 299, 300. **C.J.S.** See 29 C.J.S., Elections, § 317.

1-7-102. Employees entitled to vote. (1) Eligible electors entitled to vote at an election shall be entitled to absent themselves for the purpose of voting from any service or employment in which they are then engaged or employed on the day of the election for a period of two hours during the time the polls are open. Any such absence shall not be sufficient reason for the discharge of any person from service or employment. Eligible electors, who so absent themselves shall not be liable for any penalty, nor shall any deduction be made from their usual salary or wages, on account of their absence. Eligible electors who are employed and paid by the hour shall receive their regular hourly wage for the period of their absence, not to exceed two hours. Application shall be made for the leave of absence prior to the day of election. The employer may specify the hours during which the employee may be absent, but the hours shall be at the beginning or end of the work shift, if the employee so requests.

(2) This section shall not apply to any person whose hours of employment on the day of the election are such that there are three or more hours between the time of opening and the time of closing of the polls during which the elector is not required to be on the job.

Source: L. 92: Entire article R&RE, p. 732, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-7-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-5-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For employer guilty of a misdemeanor for violation of this section, see § 1-13-719 (1)(b) and (2).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 298. **Law reviews.** For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

1-7-103. No voting unless eligible - first-time voters casting a ballot in person after having registered by mail to vote. (1) No person shall be permitted to vote at any election unless the person's name is found in the registration record and all other requirements for voting as may be required by authorizing legislation have been met.

(2) A person otherwise eligible to vote whose name has been omitted from the registration list or property owner's list shall be permitted to vote upon taking substantially the following oath: "I do

solemnly swear or affirm that I am a citizen of the United States of the age of eighteen years or older; that I have been a resident of this state and precinct for thirty days immediately preceding this election and have not maintained a home or domicile elsewhere; that I am a registered elector in this precinct; that I am eligible to vote at this election; and that I have not previously voted at this election."; and

(a) Presenting to an election judge a certificate of registration issued on election day by the county clerk and recorder or a certificate of property ownership issued on election day by the county assessor; or

(b) An election judge obtaining verbal verification of the registration from the county clerk and recorder on election day, or obtaining verbal verification of property ownership from the county assessor on election day.

(3) The election judges, or any one of them, shall promptly contact the county clerk and recorder or the county assessor for the verbal verification so that every eligible elector present at the polling place is allowed to vote. Notation of verbal verification of registration or property ownership shall be made in the records of the election judges and in the records of the county clerk and recorder and assessor. All certificates of registration shall be surrendered to the election judges and returned to the designated election official with other election records and supplies.

(4) The self-affirming oath or affirmation provided in section 32-1-806 (2), C.R.S., if applicable to the election, may be accepted by an election judge in place of the oath and certificate or verbal verification required by subsection (2) of this section so that every eligible elector present at the polling place is allowed to vote.

(5) (a) Subject to the requirements of section 1-2-501 (2), the requirements of this subsection (5) shall apply to any person who has registered to vote by mail in accordance with part 5 of article 2 of this title and who:

(I) Has not previously voted in an election in Colorado; or

(II) Is reregistering to vote after moving from one county in this state to another and the election in which the person intends to vote takes place prior to the creation by the department of state of a computerized statewide voter registration list that satisfies the requirements of part 3 of article 2 of this title.

(b) Any person who matches either of the descriptions specified in subparagraph (I) or (II) of paragraph (a) of this subsection (5) and intends to cast his or her ballot in person shall present to the appropriate election official at the polling place identification within the meaning of section 1-1-104 (19.5).

(c) Any person who desires to cast his or her ballot in person but does not satisfy the requirements of paragraph (b) of this subsection (5) may cast a provisional ballot in accordance with the requirements of article 8.5 of this title.

Source: L. 92: Entire article R&RE, p. 732, § 9, effective January 1, 1993. L. 94: (2) amended, p. 1769, § 29, effective January 1, 1995. L. 96: (2) amended and (4) added, p. 1745, § 39, effective July 1. L. 99: (2) amended, p. 774, § 49, effective May 20. L. 2003: (5) added, p. 2078, § 14, effective May 22. L. 2004: (5)(c) amended, p. 1186, § 2, effective August 4. L. 2005: (5)(c) amended, p. 1404, § 24, effective June 6; (5)(c) amended, p. 1439, § 24, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For certificate of registration, see § 1-2-215.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, §§ 179-181.

C.J.S. See 29 C.J.S., Elections, § 58.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Election held without prior registration of voters is of no force and effect. Where the law requires registration of voters preceding an election, and provides that no one shall be permitted to vote unless he is

registered, and no registration is had, the election, where the omission occurs, is of no force and effect, and no one may claim the right to an office as a result thereof. *Fish v. Kugel*, 63 Colo. 101, 165 P. 249 (1917).

1-7-104. Affidavits of eligibility. (1) In any election where the list of registered electors and property owners is not divided by precinct, where an eligible elector may vote at any polling place in a political subdivision, or where an elector's name is not on the list of registered electors or property owners, an affidavit signed by the eligible elector stating that the elector has not previously voted in the election may be required prior to allowing the elector to cast a ballot.

(2) (Deleted by amendment, L. 96, p. 1745, § 40, effective July 1, 1996.)

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. L. 93: Entire section amended, p. 1416, § 64, effective July 1. L. 94: Entire section amended, p. 1162, § 33, effective July 1. L. 95: (2) amended, p. 840, § 58, effective July 1. L. 96: Entire section amended, p. 1745, § 40, effective July 1.

1-7-105. Watchers at primary elections. (1) Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county. The chairperson of the county central committee of each political party shall certify the persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson shall submit the names by the close of business on the Friday immediately preceding the election.

(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate shall submit the names by the close of business on the Friday immediately preceding the election.

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. L. 2007: Entire section amended, p. 1977, § 22, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

- I. General Consideration.
- II. Irregularities.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 304.

C.J.S. See 29 C.J.S., Elections, §§ 319, 320.

Annotator's note. The following annotations

include cases decided under former provisions similar to this section.

Designation of poll watchers for political organizations is not required in order to ensure constitutional access to the voting process. *Baer v. Meyer*, 728 F.2d 471 (10th Cir. 1984).

2007

II. IRREGULARITIES.

The presumption that election officers have faithfully discharged their duties always obtains until the contrary is shown. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

And the will of the people should not be defeated by an honest mistake of election officers. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

Moreover, literal compliance with prescribed forms is not required if the spirit of the law is not violated. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

And form should be subservient to substance when no legal voter has been deprived of his vote and no

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injury of any kind has been done to anyone. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

But where there is a gross disregard of the procedure and formalities required in the conduct of elections, whether permitted by design, through ignorance, or negligence, the returns should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

However, it is not necessary that actual fraud should be committed. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

Rather, when it is clearly established that frauds subversive of the purity of the ballot box and tending to nullify the popular will have been perpetrated by the election officers of a precinct, or have been perpetrated by others with their knowledge, connivance, and consent, and the extent of such frauds cannot be disclosed with reasonable certainty, the official returns from the precinct should be thrown out. *Londoner v. People ex rel. Barton*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

However, where the counting officers divulged how the vote stood and left the tally books in an unlocked box, such irregularities did not constitute fraud subversive of the purity of the ballot box and tending to nullify the popular will or such culpable negligence as to render the doings of the election officials unworthy of credence and destroy the integrity of the returns. *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

Entire poll ordinarily not rejected. The fact that illegal ballots have been cast, or that other irregularities have taken place, does not ordinarily warrant the rejection of the entire poll. *Londoner v. People*, 15 Colo. 557, 26 P. 135 (1890); *Baldauf v. Gunson*, 90 Colo. 243, 8 P.2d 265 (1932).

But where it is impossible to separate with reasonable certainty legal from illegal votes, the entire vote should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

1-7-106. Watchers at general and congressional vacancy elections. Each participating political party or issue committee whose candidate or issue is on the ballot, and each unaffiliated and write-in candidate whose name is on the ballot for a general or congressional vacancy election, shall be entitled to have no more than one watcher at any one time in each precinct polling place in the county and at each place where votes are counted in accordance with this article. The chairperson of the county central committee of each major political party, the county chairperson or other authorized official of each minor political party, the issue committee, or the write-in or unaffiliated candidate shall certify the names of one or more persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson, authorized official, issue committee, or candidate shall submit the names by the close of business on the Friday immediately preceding the election. The watchers shall surrender the certificates to the election judges at the time they enter the polling place and are sworn by the judges. This section shall not prevent party candidates or county party officers from visiting polling places to observe the progress of voting in the precincts.

Source: L. 92: Entire article R&RE, p. 733, § 9, effective January 1, 1993. **L. 95:** Entire section amended, p. 862, § 122, effective July 1. **L. 2002:** Entire section amended, p. 1633, § 15, effective June 7. **L. 2007:** Entire section amended, p. 1978, § 23, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-7-107. Watchers at nonpartisan elections. Candidates for office in nonpartisan elections, and proponents and opponents of a ballot issue, are each entitled to appoint one person to act as a watcher in every polling place in which they are a candidate or in which the issue is on the ballot. The candidates or proponents and opponents shall certify the names of persons so appointed to the designated election official on forms provided by the official and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate, proponent, or opponent shall submit the names by the close of business on the Friday immediately preceding the election.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1416, § 65, effective July 1. **L. 2007:** Entire section amended, p. 1978, § 24, effective August 3.

Editor's note: This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-7-108. Requirements of watchers. (1) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known to anyone the result of counting votes until the polls have closed.

(2) Neither candidates nor members of their immediate families by blood or marriage to the second degree may be poll watchers for that candidate.

(3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1417, § 66, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-3-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 320.

1-7-109. Judges to keep pollbooks. (1) The election judges shall keep a pollbook which shall contain one column headed "names of voters" and one column headed "number on ballot". The name and the number on the ballot of each eligible elector voting shall be entered successively under the appropriate headings in the pollbook.

(2) When preprinted signature cards are provided for each eligible elector containing the elector's name, address, birth date, and for primary elections the elector's affiliation, the use of a pollbook shall not be required. The ballot stub number of the ballot issued to the elector shall be written on the preprinted signature card. The preprinted signature cards may also constitute the computer list of eligible electors.

Source: L. 92: Entire article R&RE, p. 734, § 9, effective January 1, 1993. **L. 99:** (2) amended, p. 162, § 16, effective August 4.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-104 and 1-1-104(20) as said sections existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur. 2d, Elections, §§ 98, 99; 26 Am. Jur. 2d, Elections, §§ 329, 351.

1-7-110. Preparing to vote. (1) Except as provided in subsection (4) of this section, an eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104 (19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges. An eligible elector who is unable to write may request assistance from one of the election judges, who

shall also sign the signature card and witness the eligible elector's mark. The signature card shall provide: "I,, who reside at, am an eligible elector of this precinct or district and desire to vote at this election.
Date"

(2) If the eligible elector shows his or her identification within the meaning of section 1-1-104 (19.5) and the elector's name is found on the registration list or, where applicable, the property owner's list by the election judge in charge, the judge in charge of the pollbook or list shall enter the eligible elector's name, and the eligible elector shall be allowed to enter the immediate voting area. Besides the election officials, no more than four electors more than the number of voting booths shall be allowed within the immediate voting area at one time.

(2.5) If the elector's qualification to vote is established by the completion of an affidavit, and if the affidavit contains all of the information required in subsection (1) of this section, then the designated election official may consider the affidavit the signature card or may require the completion of an additional signature card.

(3) The completed signature cards shall be returned with other election materials to the designated election official.

(4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title.

Source: **L. 92:** Entire article R&RE, p. 735, § 9, effective January 1, 1993. **L. 94:** (2.5) added, p. 1163, § 34, effective July 1. **L. 2003:** (1) and (2) amended and (4) added, p. 1277, § 2, effective April 22. **L. 2004:** (2) amended, p. 1053, § 5, effective May 21; (2) amended, p. 1357, § 16, effective May 28. **L. 2005:** (4) amended, p. 1404, § 25, effective June 6; (4) amended, p. 1439, § 25, effective June 6. **L. 2007:** (1) and (2) amended, p. 1978, § 25, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (2) by Senate Bill 04-213 and House Bill 04-1227 were harmonized.

(3) Subsections (1) and (2) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 308, 315. **C.J.S.** See 29 C.J.S., Elections, §§ 26-46.

1-7-111. Disabled registered elector - assistance. (1) (a) If at any election, any registered elector declares to the election judges that, by reason of blindness or other physical disability or inability to read or write, he or she is unable to prepare the ballot or operate the voting device or electronic voting device without assistance, the elector shall be entitled, upon making a request, to receive the assistance of any one of the election judges or, at the elector's option, any eligible elector selected by the disabled eligible elector.

(b) Any person other than an election judge or the spouse, parent, grandparent, sibling or child eighteen years or older of the elector who assists more than one eligible elector in the precinct in casting his or her ballot shall first complete the following voter assistance/disabled voter self-affirmation form: "I,, certify that I am the individual chosen by the disabled elector to assist the disabled elector in casting a ballot".

(2) Notwithstanding the provisions of sections 1-8-115 and 1-8-302, in every political subdivision, physically disabled eligible electors shall be allowed to vote at the mail-in voters' polling

place on election day. More than one mail-in voters' polling place may be established in a county for the purposes of this subsection (2). Prior to voting, if possible, the disabled eligible elector intending to vote at the mail-in voters' polling place on election day shall complete the following self-affirmation form. If the disabled elector cannot read or write, or is unable to sign his or her name, the election official or person assisting the elector shall read the form aloud to the elector, and, upon the affirmation of the elector, will mark that the elector requesting assistance has affirmed that the facts on the form are true and correct. If the disabled elector is able to read and write, he or she shall complete the voter assistance/disabled voter self-affirmation form. The form shall provide:

"I,, affirm that I am an eligible elector in this political subdivision located in the county of, state of Colorado; that I shall vote today at this polling place. I further affirm that I have not, nor will I, cast a vote by any other means in this election."

(3) After the voter assistance/disabled voter self-affirmation form is completed, a corresponding entry shall be made on the back of the printed list or computer list. If assistance to a disabled eligible elector occurs at the precinct polling place, an entry shall be made on the pollbook or list of the name of each eligible elector assisted and the name of each person assisting.

Source: L. 92: Entire article R&RE, p. 735, § 9, effective January 1, 1993. L. 93: Entire section amended, p. 1417, § 68, effective July 1. L. 96: (2) amended, p. 1773, § 78, effective July 1. L. 2000: (1) amended, p. 1086, § 2, effective May 26. L. 2004: (1)(a) amended, p. 1358, § 17, effective May 28. L. 2007: (2) amended, p. 1779, § 15, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: (1) For disclosing or identifying vote, see § 1-13-712.

(2) For the legislative declaration contained in the 2004 act amending subsection (1)(a), see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Colo. 465, 253 P. 465 (1927).

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 309-311.

C.J.S. See 29 C.J.S., Elections, § 43.

Annotator's note. The following annotations include cases under former provisions similar to this section.

Election returns should be rejected where unauthorized persons were permitted to enter the voting booths with voters to assist them in marking their

Person not an election judge may assist. Where a verified statement of contest alleges, as ground for contesting a vote, that the election judges permitted a person who was not an election judge to assist the voter in marking his ballot, the guidelines for assistance of a disabled voter are controlling and the vote is not open to the objection that the voter had been assisted by a person not an election judge. *Israel v. Wood*, 98 Colo. 495, 56 P.2d 1324 (1936).

ballots when no assistance was asked for and no oath of the voter that he needed or desired assistance. *People v. Lindsey*, 80

1-7-112. Non-English speaking electors - assistance. (1) (a) If at any election, any elector requests assistance in voting, by reason of difficulties with the English language, he or she is unable to prepare the ballot or operate the voting device or electronic voting device without assistance, the elector shall be entitled, upon making a request, to receive the assistance of an election judge, any person selected by the designated election official to provide assistance in that precinct, or any person selected by the eligible elector requesting assistance, provided that the person rendering assistance can provide assistance in both the language in which the elector is fluent and in English. No person, other than an election judge or person selected by the designated election official to provide assistance, shall be permitted to assist more than one elector per election unless the person is the elector's spouse, parent, grandparent, sibling, or child eighteen years or older.

(b) Any person who assists any eligible elector to cast his or her ballot shall first complete the following voter assistance/disabled voter self-affirmation form: "I,, shall not in any way attempt to persuade or induce the elector to vote in a particular manner nor will I cast the elector's vote other than as directed by the elector whom I am assisting."

(2) When assistance is provided to an elector, the name of each eligible elector assisted and the name of the person assisting shall be recorded in the pollbook or list.

Source: **L. 92:** Entire article R&RE, p. 736, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1418, § 69, effective July 1. **L. 2004:** (1)(a) amended, p. 1358, § 18, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-109 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (1)(a), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-7-113. Influencing electors. No person who assists an elector as authorized by this title shall seek to persuade or induce the eligible elector to vote in a particular manner.

Source: **L. 92:** Entire article R&RE, p. 737, § 9, effective January 1, 1993.

1-7-114. Write-in votes. (1) Eligible electors may cast a write-in vote for a candidate who has filed an affidavit of intent of write-in candidacy pursuant to section 1-4-1101 by writing the name of the person in the blank space provided for write-in candidates on the ballot. Each write-in vote may include a reasonably correct spelling of a given name, an initial or nickname, or both a given name and an initial or nickname, and shall include the last name of the person for whom the vote is intended. Whenever write-in votes are cast, they shall be counted only when the intention of the elector is clearly apparent.

(2) A vote for a write-in candidate shall not be counted unless that candidate is qualified to hold the office for which the elector's vote was cast.

(3) If the elector has cast more votes for an office than he or she is lawfully entitled to cast, by voting for both a candidate appearing on the ballot and a valid write-in candidate, neither of the votes for the office shall be counted.

(4) (a) The designated election official shall make a list of eligible write-in candidates and provide the list to the election judges. The order of the write-in candidates on such list may be determined by the time of filing the affidavit pursuant to section 1-4-1101.

(b) Except as may be required to accommodate a person with a disability, election judges shall not verbally comment on write-in candidates. Upon request of an eligible elector, an election judge may display to the requesting elector the list of eligible write-in candidates provided to the judges by the designated election official. The list shall not be posted nor may the list be taken into a voting booth.

Source: **L. 92:** Entire article R&RE, p. 737, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1419, § 70, effective July 1. **L. 96:** (4) added, p. 1746, § 41, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-309 (3) and 1-7-507 (3) as said sections existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-115. Time in voting area. Eligible electors shall cast their ballots without undue delay and shall leave the immediate voting area as soon as voting is complete. An eligible elector shall not enter a voting booth already occupied by another eligible elector. An eligible elector shall not occupy a voting booth for longer than the time determined by the secretary of state by rule if all the booths are in use and

other eligible electors are waiting to use them. No eligible elector whose name has been entered on the pollbook shall be allowed to reenter the immediate voting area during the election, except an election judge.

Source: **L. 92:** Entire article R&RE, p. 737, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1766, § 7, effective June 6. **L. 94:** Entire section amended, p. 1163, § 35, effective July 1. **L. 2007:** Entire section amended, p. 1979, § 26, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-304 (3) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-106 (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-7-116. Coordinated elections. (1) If more than one political subdivision holds an election on the same day in November and the eligible electors for each such election are the same or the boundaries overlap, the county clerk and recorder shall be the coordinated election official and shall conduct the elections on behalf of all political subdivisions that are not utilizing the mail ballot procedure set forth in sections 1-7.5-101 to 1-7.5-112. As used in this subsection (1), "political subdivision" shall include the state, counties, municipalities, school districts, and special districts formed pursuant to title 32, C.R.S.

(2) The political subdivisions for which the county clerk and recorder will conduct the coordinated election shall enter into an agreement with the county clerk and recorder for the county or counties in which the political subdivision is located concerning the conduct of the coordinated election. The agreement shall be signed no later than seventy days prior to the scheduled election. The agreement shall include but not be limited to the following:

(a) Allocation of the responsibilities between the county clerk and recorder and the political subdivisions for the preparation and conduct of the coordinated election; and

(b) Provision for a reasonable sharing of the actual cost of the coordinated election among the county and the political subdivisions. For such purpose, political subdivisions are not responsible for sharing any portion of the usual costs of maintaining the office of the county clerk and recorder, including but not limited to overhead costs and personal services costs of permanent employees, except for such costs that are shown to be directly attributable to conducting coordinated elections on behalf of political subdivisions. Notwithstanding any other provision of this section, the state's share of the actual costs of the coordinated election shall be governed by the provisions of section 1-5-505.5. Where the state's reimbursement to a particular county for the costs of conducting a coordinated election pursuant to section 1-5-505.5 is less than the costs of conducting a coordinated election for which the county is entitled to reimbursement by means of a cost-sharing agreement entered into pursuant to the provisions of this subsection (2), such differential shall be assumed by the county. Where the state's reimbursement to a particular county for the costs of conducting a coordinated election pursuant to section 1-5-505.5 is greater than the costs of conducting a coordinated election for which the county is entitled to reimbursement by means of a cost-sharing agreement entered into pursuant to the provisions of this subsection (2), the county shall be entitled to retain such differential, with no obligation to return any portion of such amount to the state.

(2.5) Notwithstanding any other provision of this section, the scientific and cultural facilities district's share of the actual costs of the coordinated election shall be governed by the provisions of section 32-13-107 (5), C.R.S.

(3) Notwithstanding the provision for independent mail ballot elections in subsection (1) of this section, the ballot issue notice shall be prepared and mailed in substantial compliance with part 9 of this article, and the preparation and mailing thereof shall be made pursuant to an agreement as provided in subsection (2) of this section.

(4) (Deleted by amendment, L. 94, p. 1163, § 36, effective July 1, 1994.)

(5) If, by one hundred days before the election, a political subdivision has taken formal action to participate in a general election or other election that will be coordinated by the county clerk and recorder, the political subdivision shall notify the county clerk and recorder in writing.

Source: **L. 92:** Entire article R&RE, p. 737, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1419, § 71, effective July 1. **L. 94:** (1), (2)(b), and (4) amended, p. 1163, § 36, effective July 1. **L. 96:** (3) amended, p. 1746, § 42, effective July 1. **L. 99:** IP(2) amended and (5) added, p. 774, § 50, effective May 20. **L. 2000:** (2)(b) amended, p. 656, § 3, effective August 2. **L. 2001:** (5) amended, p. 1003, § 9, effective August 8. **L. 2005:** IP(2) amended, p. 1404, § 26, effective June 6; IP(2) amended, p. 1439, § 26, effective June 6. **L. 2006:** (2.5) added, p. 1779, § 1, effective June 6.

1-7-117. Joint elections. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 738, § 9, effective January 1, 1993. **L. 93:** Entire section repealed, p. 1420, § 72, effective July 1.

PART 2

PRIMARY ELECTIONS

1-7-201. Voting at primary election. (1) Any registered elector who has declared an affiliation with a political party that is participating in a primary election and who desires to vote for candidates of that party at a primary election shall show identification, as defined in section 1-1-104 (19.5), and write his or her name and address on a form available at the polling place and give the form to one of the election judges, who shall clearly and audibly announce the name.

(2) If the name is found on the registration list, the election judge having charge of the list shall likewise repeat the elector's name and present the elector with the party ballot of the political party affiliation last recorded. If unaffiliated, the eligible elector shall openly declare to the election judges the name of the political party with which the elector wishes to affiliate, complete the approved form for voter registration information changes, and initial the registration list in the space provided. Declaration of affiliation with a political party shall be separately dated and signed or dated and initialed by the eligible elector in such manner that the elector clearly acknowledges that the affiliation has been properly recorded. Thereupon, the election judges shall deliver the appropriate party ballot to the eligible elector. Eligible electors who decline to state an affiliation with a political party that is participating in the primary shall not be entitled to vote at the primary election.

(3) Forms completed by eligible electors, as provided in subsection (1) of this section, shall be returned with other election materials to the county clerk and recorder. If no challenges have been made, the forms may be destroyed pursuant to section 1-7-802.

(4) Party ballots shall be cast in the same manner as in general elections. An elector shall not vote for more candidates for any office than are to be elected at the general election as indicated on the ballot.

(5) Instead of voting for a candidate whose name is printed on the party ballot, an elector may cast a write-in vote for any eligible candidate who is a member of the major political party and who has filed an affidavit of intent of write-in candidacy pursuant to section 1-4-1101. When no candidate has been designated by an assembly or by petition, a write-in candidate for nomination by any major political party must receive at least the number of votes at any primary election that is required by section 1-4-801 (2) to become designated as a candidate by petition.

Source: **L. 92:** Entire article R&RE, p. 738, § 9, effective January 1, 1993. **L. 94:** (3) amended, p. 1621, § 2, effective May 31. **L. 98:** (1), (2), and (5) amended, p. 259, § 12, effective April 13. **L. 99:** (2) amended, p. 162, § 17, effective August 4. **L. 2003:** (1) amended, p. 1277, § 3, effective April 22; (1) and (2) amended, p. 1313, § 13, effective April 22.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (1) by Senate Bill 03-102 and House Bill 03-1142 were harmonized.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 210-212.

1-7-202. Count and certification. As soon as the polls are closed, the election judges shall count the total number of ballots cast and shall then count all the ballots for each major political party separately, using the accounting forms furnished in accordance with section 1-7-203 and continuing until the count is completed. In no case shall party ballots be intermingled. After all ballots have been counted, the election judges shall certify the number of votes cast according to the method designated for the type of voting equipment used.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993. **L. 98:** Entire section amended, p. 259, § 13, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For procedure in counting ballots, see §§ 1-7-305, 1-7-406, and 1-7-507.

1-7-203. Accounting forms. The county clerk and recorder shall furnish each precinct with two sets of accounting forms for each major political party having candidates at the primary election. The forms shall be furnished at the same time and in the same manner as ballots. All accounting forms shall have the proper party designation at the top thereof and shall state the precinct, county, and date of the primary election. The secretary of state shall prescribe the accounting forms to be used.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993. **L. 98:** Entire section amended, p. 260, § 14, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-15-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

PART 3

PAPER BALLOTS

1-7-301. Judges open ballot box first. Immediately before proclamation is made of the opening of the polls, the election judges shall open the ballot box in the presence of those assembled and shall turn it upside down so as to empty it of anything that may be in it and then shall lock it securely. No ballot box shall be reopened until the time for counting the ballots therein.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-301 as said section existed in 1991, the year prior to the

most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 356.

1-7-302. Electors given only one ballot. Election judges shall give to each eligible elector a single ballot, which shall be separated from the stub by tearing or cutting along the perforated or dotted line. The election judge having charge of the ballots shall endorse his or her initials on the duplicate stub. Another election judge shall enter the date and the number of the ballot on the registration record of the eligible elector before delivering the ballot to the eligible elector. The election judge having charge of the pollbook shall write the name of the eligible elector and the number of the ballot on the pollbook.

Source: L. 92: Entire article R&RE, p. 739, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1420, § 73, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-302 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-105 (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-303. Spoiled ballots. No person shall remove any ballot from the polling place before the close of the polls. Any eligible elector who spoils a ballot may obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot. The spoiled ballots thus returned shall be immediately canceled and shall be preserved and returned to the designated election official, as provided in section 1-7-701.

Source: L. 92: Entire article R&RE, p. 740, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-303 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 322, 326, 357.

1-7-304. Manner of voting. (1) Each eligible elector, upon receiving a ballot, shall immediately proceed unaccompanied to one of the voting booths provided. To cast a vote, the eligible elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the name of the candidate or the names of the joint candidates of the elector's choice for each office to be filled. In the case of a ballot issue, the elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the answer which the elector desires to give. Before leaving the voting booth, the eligible elector shall fold the ballot without displaying the marks thereon, in the same way it was folded when received by the elector, so that the contents of the ballot are concealed and the stub can be removed without exposing any of the contents of the ballot, and shall keep the ballot folded until it is deposited in the ballot box.

(2) Each eligible elector who has completed the ballot and is ready to vote shall then leave the voting booth and approach the election judges having charge of the ballot box. The elector shall give his or her name to one of the election judges, who shall clearly and audibly announce the name in a loud and

distinct tone of voice. The elector's ballot shall be handed to the election judge in charge of the ballot box, who shall announce the name of the eligible elector and the number upon the duplicate stub of the ballot, which number shall correspond with the stub number previously placed on the registration list. If the stub number of the ballot corresponds and is identified by the initials that the issuing election judge placed thereupon, the election judge shall then remove the duplicate stub from the ballot. The ballot shall then be returned by the election judge to the elector, who shall, in full view of the election judges, deposit it in the ballot box, with the official endorsement on the ballot uppermost.

Source: L. 92: Entire article R&RE, p. 740, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-304 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For ballots for general and congressional vacancy elections, see § 1-5-403; for method of counting paper ballots, see § 1-7-307; for ballots improperly marked, see § 1-7-309.

ANNOTATION

- I. General Consideration. this section.
- II. Marking of Ballots.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 319-323.

C.J.S. See 29 C.J.S., Elections, §§ 291-293, 324, 325.

Annotator's note. The following annotations include cases decided under former provisions similar to

II. MARKING OF BALLOTS.

A voter is required to express his choice by making an "X" in the space left, for the purpose, opposite the name of the candidate for whom he desires to vote. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

And a cross mark has to be made when voters write in more than one name. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

1-7-305. Counting by counting judges. (1) In precincts having counting judges, the receiving judges, at 8 a.m., or as soon thereafter as the counting judges request the ballot box, shall deliver to the counting judges the ballot box containing all ballots that have been cast up to that time, and the receiving judges shall then proceed to use the other ballot box furnished for voting. The receiving judges shall open, empty, and lock the alternate ballot box in the manner prescribed in section 1-7-301.

(2) When the counting judges have counted the votes in a ballot box, they shall return the empty ballot box to the receiving judges and exchange it for the box containing ballots cast since taking possession of the first ballot box. The judges shall continue to exchange ballot boxes in the same manner during the day until the polls are closed and shall continue counting until all ballots have been counted.

(3) When an exchange of ballot boxes is made as described in subsection (2) of this section, the receiving judges shall sign and furnish to the counting judges a statement showing the number of ballots that are to be found in each ballot box as indicated by the pollbooks. The counting judges shall then count ballots in the manner prescribed in section 1-7-307.

(4) The governing body may provide a separate room or building for the counting judges but, when ballot boxes are moved from one room or building to another, they shall be under the constant observation of at least one of the counting judges.

Source: L. 92: Entire article R&RE, p. 741, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-305 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the election judges opening, emptying, and then locking ballot boxes, see §§ 1-7-301 and 1-7-501.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 356. **C.J.S.** See 29 C.J.S., Elections, §§ 359, 360.

1-7-306. Counting by receiving judges. In precincts which do not have counting judges, as soon as the polls at any election have closed, the receiving judges shall immediately open the ballot box and proceed to count the ballots in the manner prescribed in section 1-7-307. The receiving judges shall not adjourn until the counting is finished.

Source: L. 92: Entire article R&RE, p. 741, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1420, § 74, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-306 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 356-361. **C.J.S.** See 29 C.J.S., Elections, §§ 359, 360.

1-7-307. Method of counting paper ballots. (1) The election judges shall first count the number of ballots in the box. If the ballots are found to exceed the number of names entered on each of the pollbooks, the election judges shall then examine the official endorsements. If, in the unanimous opinion of the judges, any of the ballots in excess of the number on the pollbooks are deemed not to bear the proper official endorsement, they shall be put into a separate pile and into a separate record, and a return of the votes in those ballots shall be made under the heading "excess ballots". When the ballots and the pollbooks agree, the judges shall proceed to count the votes.

(2) Each ballot shall be read and counted separately. Every name and all names of joint candidates separately marked as voted for on the ballot shall be read and an entry made on each of two accounting forms before any other ballot is counted. The entire number of ballots, excepting "excess ballots", shall be read, counted, and placed on the accounting forms in like manner. When all of the ballots, except "excess ballots", have been counted, the election judges shall post the votes from the accounting forms.

(3) When all the votes have been read and counted, the ballots shall be returned to the ballot box, the opening shall be carefully sealed, and the election judges shall place their initials on the seal. The cover shall then be locked and the ballot box delivered to the designated election official, as provided in section 1-7-701.

(4) All persons, except election judges and watchers, shall be excluded from the place where the ballot counting is being held until the count has been completed.

Source: L. 92: Entire article R&RE, p. 741, § 9, effective January 1, 1993. **L. 93:** (1) amended, p. 1421, § 75, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-307 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the form of ballots, see §§ 1-5-407, 1-5-408, 1-7-304 (1), and 1-7-503 (1); for improperly marked ballots, see § 1-7-309; for penalty for divulging information concerning the count prior to 7:00 p.m., see § 1-13-718.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 356-361.

C.J.S. See 29 C.J.S., Elections, § 362.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The intention of the voter, as expressed upon the face of his ballot, has always been regarded as the cardinal principle controlling the count. Under a system providing for balloting like the Australian, it is necessary that certain rules be prescribed to prevent confusion and secure uniformity; by this means the intention of the voter is to be ascertained. *Young v. Simpson*, 21 Colo. 460, 42 P. 666 (1895); *Heiskell v. Landrum*, 23 Colo. 65, 46 P. 120 (1896); *Rhode v. Steinmetz*, 25 Colo. 308, 55 P. 814

(1898); *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900); *Wiley v. McDowell*, 55 Colo. 236, 133 P. 757 (1913).

So neither the judges of the election nor the courts are authorized to go beyond what the voter has set down upon his ballot to ascertain his intention. *Wiley v. McDowell*, 55 Colo. 236, 133 P. 757 (1913).

But in order to designate his choice, a voter must use a cross mark as the law requires. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

Hence, where no cross mark is used anywhere with reference to any of the candidates for the particular office in question, the ballots ought not to be counted. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

1-7-308. Judges to keep accounting forms. As the election judges open and read the ballots, other election judges shall carefully enter the votes each of the candidates, each pair of joint candidates, and each ballot issue has received on the accounting forms furnished by the designated election official for that purpose. The names of the candidates and the names of each pair of joint candidates shall be placed on the accounting forms in the order in which they appear on the official ballots.

Source: L. 92: Entire article R&RE, p. 742, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-308 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where there is a discrepancy between the tally

list and the certificate of the judges of election as to the number of votes any candidate received, the certificate only can be considered and cannot be changed by the canvassers by reference to the tally list. *People ex rel. Miller v. Tool*, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

1-7-309. Determination of improperly marked ballots. (1) Votes cast for an office to be filled or a ballot issue to be decided shall not be counted if an elector marks more names than there are persons to be elected to an office or if for any reason it is impossible to determine the elector's choice of candidate or vote concerning the ballot issue.

(2) A defective or an incomplete cross mark on any ballot in a proper place shall be counted if no other cross mark appears on the ballot indicating an intention to vote for some other candidate or ballot issue.

(3) No ballot shall be counted unless it has the official endorsement required by section 1-7-302.

(4) Ballots not counted because of the election judges' inability to determine the elector's intent for all candidates and ballot issues shall be marked "defective" on the back, banded together and separated from the other ballots, returned to the ballot box, and preserved by the designated election official pursuant to section 1-7-801.

(5) When the election judges in any precinct discover in the counting of votes that the name of any write-in candidate voted for is misspelled or omitted in part, the vote for that candidate shall be counted if the writing meets the requirements of section 1-7-114 (1).

Source: L. 92: Entire article R&RE, p. 742, § 9, effective January 1, 1993. L. 93: (5) amended, p. 1421, § 76, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-309 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the form of ballots, see §§ 1-5-407, 1-5-408, 1-7-304 (1), and 1-7-503 (1); for the method of counting paper ballots, see § 1-7-307.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 326, 367, 379.

C.J.S. See 29 C.J.S., Elections, §§ 291, 296, 297.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ballot not rejected if choice can be gathered. Unless the statute declares that a strict compliance with its requirements by the elector is essential to have his ballot counted, courts will not undertake to disfranchise him by rejecting his ballot where his choice can be gathered from the ballot viewed in the light of the circumstances surrounding the election. *Young v. Simpson*, 21 Colo. 460, 42 P. 666 (1895).

As where cross mark is before candidate's name. Where a ballot has no mark opposite any party

emblem, but is marked with a cross mark to the left and before the candidate's name, it should be counted, although the customary and better practice is to put the cross mark to the right of the name of the candidate intended to be voted for. *Young v. Simpson*, 21 Colo. 460, 42 P. 666 (1895).

Or slightly to the right of the appropriate square. Where a voter designates his choice by placing a cross mark not in the space prepared for the purpose, but slightly to the right of the square opposite it, the ballot is properly counted. *Young v. Simpson*, 21 Colo. 460, 42 P. 666 (1895).

Similarly, a ballot should be counted if intent can be ascertained with reasonable certainty. A ballot cast by a qualified elector, at an election held according to law and at the time and place provided by law, should be counted if the intent of the voter can be ascertained with reasonable certainty, unless this is forbidden by some positive provision of statute. *Baldwin v. Wade*, 50 Colo. 109, 114 P. 399 (1911).

As where name is written in under printed name. In the official ballot of a municipal election the name of A was printed as a candidate; below this, and in the same space, the voter wrote the name of B; and in the space left for this purpose, he placed a cross mark, the intersection of which was not directly opposite either name. Considering that the voter, if he desired to vote for A, had

no occasion to insert the name of B, it was held that the ballot must be counted for B. *Baldwin v. Wade*, 50 Colo. 109, 114 P. 399 (1911).

Or above an obliterated printed name. Where a voter obliterates a printed name with ink and writes in a name above it, placing a cross mark at the right, the ballot should be counted. *Baldwin v. Wade*, 50 Colo. 109, 114 P. 399 (1911).

Nevertheless, an elector, in order to properly express his choice, must do so substantially in the manner provided by statute. *Young v. Simpson*, 21 Colo. 460, 42 P. 666 (1895); *Heiskell v. Landrum*, 23 Colo. 65, 46 P. 120 (1896); *Rhode v. Steinmetz*, 25 Colo. 308, 55 P. 814 (1898); *Wiley v. McDowell*, 55 Colo. 236, 133 P. 757 (1913); *Bromley v. Hallock*, 57 Colo. 148, 140 P. 186 (1914).

Thus a voter must express his choice by making a "X" opposite candidate's name. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

Likewise, voters must make cross marks when they write in more than one name. Where there are several candidates for an office and voters write in the spaces left for this purpose, under the word indicating the office, the names of those persons, among them the name of the contestor but no cross mark set opposite the contestor's name upon any of these ballots, they are not to be counted for the contestor. *Riley v. Trainor*, 57 Colo. 155, 140 P. 469 (1914).

An indelible pencil may be used. Where a ballot is in perfect form, but the name of the person voted for and the cross marks are written with an indelible pencil, it should be counted. *Baldwin v. Wade*, 50 Colo. 109, 114 P. 399 (1911).

A voter prohibited from marking more names on a ballot than there are persons to be elected to an office cannot be construed to prohibit only the double marking of eligible candidates for such office. *Moran v. Carlstrom*, 775 P.2d 1176 (Colo. 1989).

This section and § 1-4-1001 (now § 1-4-1101) do not conflict. This section regulates the conduct of voters and rejects ballots showing more names than persons to be elected to an office whereas § 1-4-1001 (now § 1-4-1101) regulates the conduct of write-in candidates and prohibits the write-in candidate who fails to file an affidavit of intent from accumulating votes. *Moran v. Carlstrom*, 775 P.2d 1176 (Colo. 1989) (decided prior to 1992 repeal and reenactment of this article).

PART 4

VOTING MACHINES

1-7-401. Judges to inspect machines. In each precinct using voting machines, the election judges shall meet at the polling place at least forty-five minutes before the time set for the opening of the polls at each election. Before the polls are open for election, each judge shall carefully examine each machine used in the precinct to ensure that no vote has yet been cast and that every counter, except the protective counter, registers zero.

Source: L. 92: Entire article R&RE, p. 743, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-401 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-402. Sample ballots - ballot labels. (1) The designated election official shall provide each election precinct in which voting machines are to be used with two sample ballots, which shall be arranged in the form of a diagram showing the front of the voting machine as it will appear after the official ballot labels are arranged thereon for voting on election day. The sample ballots may be either in full or reduced size and shall be delivered and submitted for public inspection in the same manner as provided by law for sample ballots used in nonmachine voting.

(2) The designated election official shall also prepare the official ballot for each voting machine and shall place the official ballot on each voting machine to be used in precinct polling places under the election official's supervision and shall deliver the required number of voting machines to each election precinct no later than the day before the polls open.

Source: L. 92: Entire article R&RE, p. 743, § 9, effective January 1, 1993. **L. 99:** (2) amended, p. 775, § 51, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-402 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 266.

1-7-403. Instruction to electors. In case any elector, after entering the voting machine, asks for further instructions concerning the manner of voting, an election judge shall give instructions to the elector. No election judge or other election official or person assisting an elector shall enter the voting machine, except as provided in sections 1-7-111 and 1-7-112. After receiving instructions, the elector shall vote as if unassisted.

Source: L. 92: Entire article R&RE, p. 743, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-403 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 327, 328.

1-7-404. Judge to watch voting machine. No person shall deface or damage any voting machine or the ballot thereon. The election judges shall designate at least one election judge to be stationed beside the entrance to the voting machine during the entire period of the election to see that it is properly closed after each voter has entered. At such intervals as may be deemed necessary, the election judge shall also examine the face of the machine to ascertain whether it has been defaced or damaged, to detect any wrongdoing, and to repair any damage.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-404 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

1-7-405. Seal on voting machine. The designated election official shall supply each election precinct with a seal for each voting machine to be used in the precinct for the purpose of sealing the machine after the polls are closed. The designated election official shall also provide an envelope for the return of the keys to each voting machine along with the election returns.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-7-405 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-6-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-406. Close of polls and count - seals. As soon as the polls are closed, the election judges shall immediately lock and seal each voting machine against further voting, and it shall so remain for a period of thirty days unless otherwise ordered by the court and except as provided in section 1-7-407. Immediately after each machine is locked and sealed, the election judges shall open the counting compartment and proceed to count the votes. After the total vote for each candidate and ballot issue has been ascertained, the election judges shall record on a certificate the number of votes cast, in numerical figures only, and return it in the manner prescribed by section 1-7-701.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993. **L. 94:** Entire section amended, p. 1621, § 3, effective May 31.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-406 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 299, 300, 362-368.

C.J.S. See 29 C.J.S., Elections, §§ 357-369.

1-7-407. Close of polls - primary. In the event no election contest is filed by any candidate in a primary election within the time prescribed by section 1-11-203, the county clerk and recorder may unlock and break the seals of voting machines at any time after the fifteenth day following the date of the primary election.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1767, § 8, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-406 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-111 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 299.

Where there is a discrepancy between the tally list and the certificate of the judges of election as to the number of votes any candidate received, the certificate only

can be considered and cannot be changed by the canvassers by reference to the tally list. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231, (1905)(decided under former law).

1-7-408. Judges to keep accounting forms. As some election judges open and read the ballots, other election judges, utilizing the accounting forms prescribed by the secretary of state and furnished by the designated election official, shall carefully record the votes cast for each of the candidates, for each pair of joint candidates, and for each ballot issue.

Source: L. 92: Entire article R&RE, p. 744, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-407 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where there is a discrepancy between the tally

list and the certificate of the judges of election as to the number of votes any candidate received, the certificate only can be considered and cannot be changed by the canvassers by reference to the tally list. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

PART 5

ELECTRONIC VOTING EQUIPMENT

1-7-501. Judges open ballot box first. Immediately before proclamation is made of the opening of the polls, the election judges shall open the ballot box in the presence of those assembled and shall turn it upside down so as to empty it of anything that may be in it and then shall lock it securely. No ballot box shall be reopened until the time for counting the ballots or ballot cards therein.

Source: L. 92: Entire article R&RE, p. 745, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-501 as said section existed in 1991, the year prior to the

most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 356-361.

1-7-502. Elector given only one ballot or ballot card. An election judge shall give to each eligible elector only one ballot or ballot card, which shall be removed from the package by tearing it along the perforated line below the stub. The election judge having charge of the pollbook shall write the name of the eligible elector and the number of the ballot or ballot card upon the pollbook.

Source: L. 92: Entire article R&RE, p. 745, § 9, effective January 1, 1993. **L. 97:** Entire section amended, p. 185, § 4, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-502 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-105 (3) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-503. Manner of voting. (1) Each eligible elector, upon receiving a ballot, shall immediately proceed unaccompanied to one of the voting booths provided. To cast a vote, the eligible elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the name of the candidate or the names of the joint candidates of the elector's choice for each office to be filled. In the case of a ballot issue, the elector shall clearly mark or stamp in the appropriate square or place a cross mark (X) opposite the answer which the elector desires to give. Before leaving the voting booth, the eligible elector, without displaying the marks thereon, shall place the ballot in the privacy envelope so that the contents of the ballot or ballot card are concealed and shall place the envelope and the ballot or ballot card in the ballot box.

(2) Each eligible elector who has prepared the ballot and is ready to vote shall then leave the voting booth and approach the election judges having charge of the ballot box. The eligible elector shall give his or her name to one of the election judges. The elector shall, in full view of the election judges, deposit the ballot or ballot card in the ballot box, with the official endorsement on the ballot or ballot card facing upward.

(3) In precincts which use electronic voting equipment in which voting is by a method other than a ballot, each voter shall be listed by name in the pollbook and shall be given an entry card to the electronic voting device.

(4) Notwithstanding any provision of subsection (1) or (2) of this section to the contrary, at a polling place at which a ballot marking device, as defined in section 1-5-702 (2.5), is available for accessible voting, the election judge in charge of the ballot box shall deposit every elector's ballot card in the ballot box.

Source: L. 92: Entire article R&RE, p. 745, § 9, effective January 1, 1993. **L. 97:** (1) and (2) amended, p. 185, § 5, effective August 6. **L. 2007:** (4) added, p. 1979, § 27, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-503 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsection (4) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For ballots for general and congressional vacancy elections, see § 1-5-403; for method of counting paper ballots, see § 1-7-307; for ballots improperly marked, see § 1-7-309.

ANNOTATION

- I. General Consideration.
- II. Marking of Ballots.

this section.

II. MARKING OF BALLOTS.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 303.

C.J.S. See 29 C.J.S., Elections, §§ 291-293, 325-327.

Annotator's note. The following annotations include cases decided under former provisions similar to

A voter is required to express his choice by making an "X" in the space left, for the purpose, opposite the name of the candidate for whom he desires to vote. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

And a cross mark has to be made when voters write in more than one name. Riley v. Trainor, 57 Colo. 155, 140 P. 469 (1914).

1-7-504. Spoiled ballots or ballot card. In precincts in which voting is on a ballot or ballot card, no person shall remove any ballot or ballot card from the polling place before the close of the polls. Any eligible elector who spoils a ballot or ballot card may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot or ballot card. The spoiled ballots or ballot cards thus returned shall be immediately canceled and shall be preserved and returned to the designated election official, as provided in section 1-7-701.

Source: L. 92: Entire article R&RE, p. 746, § 9, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-504 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 303, 340-347.

C.J.S. See 29 C.J.S., Elections, § 324.

1-7-505. Close of polls - count and seals in electronic voting. (1) After the polls have been closed, the election judges shall secure the vote recorders or the voting devices, or both, against further use.

(2) In precincts in which voting is on a ballot or ballot card, election judges shall prepare a return in duplicate showing the number of eligible electors, as indicated by the pollbook, who have voted in the precinct, the number of official ballots or ballot cards received, and the number of spoiled and unused ballots or ballot cards returned. The original copy of the return shall be deposited in the metal or durable plastic transfer box, along with all voted and spoiled ballots. The transfer box shall then be sealed in such a way as to prevent tampering with the box or its contents. The designated election official shall provide a numbered seal. The duplicate copy of the return shall be mailed at the nearest post office or post-office box to the designated election official by an election judge other than the one who delivers the transfer box to the designated counting center. For partisan elections, two election judges of different political affiliations, as provided in section 1-6-109.5, shall deliver the sealed transfer box to the counting center designated by the county clerk and recorder.

(3) In precincts in which electronic voting is by a method other than a ballot or ballot card, election judges shall, after securing the voting devices, prepare the paper tape containing the votes.

Source: L. 92: Entire article R&RE, p. 746, § 9, effective January 1, 1993. **L. 93:** (2) amended, p. 1767, § 9, effective June 6; (2) amended, p. 1421, § 77, effective July 1. **L. 98:** (2) amended, p. 586, § 26, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-505 as said section existed in 1991, the year prior to the

most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-119 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 299, 300, 362-368. **C.J.S.** See 29 C.J.S., Elections, § 317.

1-7-506. Electronic vote-counting - test. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 747, § 9, effective January 1, 1993. **L. 95:** (2) amended, p. 840, § 59, effective July 1. **L. 96:** (2) amended, p. 1746, § 43, effective July 1. **L. 2002:** (2) amended, p. 1634, § 16, effective June 7. **L. 2004:** (1)(b) amended, p. 1358, § 19, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, were similar to those contained in 1-7-506 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, were similar to those contained in 1-6-120 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-7-506.5. Testing of voting systems and tabulating equipment. (Repealed)

Source: **L. 2004:** Entire section added, p. 1358, § 20, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act enacting this section takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

1-7-507. Electronic vote-counting - procedure. (1) All proceedings at the counting centers shall be under the direction of the designated election official and the representatives of the political parties, if a partisan election, or watchers, if a nonpartisan election. No persons, except those authorized for the purpose, shall touch any ballot, ballot card, "prom" or other electronic device, or return.

(2) All persons who are engaged in the processing and counting of the ballots or recorded precinct votes shall be deputized in writing and take an oath that they will faithfully perform their assigned duties.

(3) The return printed by the electronic vote-tabulating equipment, to which have been added write-in votes, shall, when certified by the designated election official, constitute the official return of each precinct. The designated election official may, from time to time, release unofficial returns. Upon completion of the count, the official returns shall be open to the public.

(4) Mail-in ballots shall be counted at the counting centers in the same manner as precinct ballots.

(5) Write-in ballots may be counted in their precincts by the precinct election judges or at the counting centers.

(6) If for any reason it becomes impracticable to count all or a part of the ballots with electronic vote-tabulating equipment, the designated election official may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots as provided in 1-7-307.

(7) The receiving, opening, and preservation of the transfer boxes and their contents shall be the responsibility of the designated election official, who shall provide adequate personnel and facilities to assure accurate and complete election results. Any indication of tampering with the ballots, ballot card, or other fraudulent action shall be immediately reported to the district attorney, who shall immediately investigate the action and report the findings in writing within ten days to the designated election official and shall prosecute to the full extent of the law any person or persons responsible for the fraudulent action.

(8) Repealed. / (Deleted by amendment, L. 2004, p. 1359, § 21, effective January 1, 2006.)

Source: L. 92: Entire article R&RE, p. 748, § 9, effective January 1, 1993. L. 2004: (7) and (8) amended and (8) repealed, pp. 1359, 1361, 1213, §§ 21, 30, 31, 108, effective January 1, 2006. L. 2007: (4) amended, p. 1779, § 16, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-507 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-6-121 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act repealing subsection (8) takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for the repeal of subsection (8). For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

Cross references: (1) For counting procedure for paper ballots, see § 1-7-307; for counting procedure in use of voting machines, see §§ 1-7-406 and 1-7-505.

(2) For the legislative declaration contained in the 2004 act amending subsections (7) and (8) and repealing subsection (8), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-7-508. Determination of improperly marked ballots. (1) If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote-counting equipment, a true duplicate copy shall be made of the damaged ballot in the presence of two witnesses. The duplicate ballot shall be substituted for the damaged ballot. Every duplicate ballot shall be clearly labeled as such and shall bear a serial number which shall be recorded on the damaged ballot.

(2) Votes cast for an office to be filled or a ballot question or ballot issue to be decided shall not be counted if a voter marks more names than there are persons to be elected to an office or if for any reason it is impossible to determine the elector's choice of candidate or vote concerning the ballot question or ballot issue. A defective or an incomplete mark on any ballot in a proper place shall be counted if no other mark is on the ballot indicating an intention to vote for some other candidate or ballot question or ballot issue.

(3) No ballot shall be counted unless it has the official endorsement required by section 1-7-502.

(4) Ballots not counted because of the election judges' inability to determine the elector's intent for all candidates and ballot issues shall be marked "defective" on the back, banded together, separated from the other ballots, and preserved by the designated election official pursuant to section 1-7-801.

Source: L. 92: Entire article R&RE, p. 749, § 9, effective January 1, 1993. L. 2004: (2) amended, p. 1359, § 22, effective January 1, 2006.

Editor's note: Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act amending subsection (2) takes effect upon passage. However, section 31 was further amended establishing an effective date of January 1, 2006, for subsection (2). For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-7-509. Electronic and electromechanical vote counting - testing of equipment required. (1) (a) An electronic or electromechanical voting system shall be tested at the conclusion of maintenance and testing. The tests shall be sufficient to determine that the voting system is properly programmed, the election is correctly defined on the voting system, and all of the voting system's input, output, and communication devices are working properly.

(b) The designated election official shall conduct at least three tests on all electronic and electromagnetic voting equipment, including a hardware test, a public logic and accuracy test conducted in accordance with subsection (2) of this section, and a postelection test or audit conducted in accordance with rules promulgated by the secretary of state. Each type of ballot, including mail-in, early voting, provisional, precinct, and audio ballots, shall be tested in accordance with rules promulgated by the

secretary of state. The tests shall ensure that the equipment will correctly count the votes cast for all offices and on all ballot questions and ballot issues and that the voting system will accurately count ballots of all types.

(c) The designated election official shall select a testing board comprising at least two persons, one from each major political party, from the list provided by the major political parties pursuant to section 1-6-102.

(2) (a) A public test of voting equipment shall be conducted prior to the commencement of voting in accordance with this section by processing a preaudited group of ballots produced so as to record a predetermined number of valid votes for each candidate and on each ballot question or ballot issue. The test shall ensure that the system accurately records votes when the elector has the option of voting for more than one candidate in a race. The test shall ensure that the voting system properly rejects and does not count overvotes and undervotes.

(b) The public test shall be open to representatives of the political parties, the press, and the public, subject to the rules promulgated by the secretary of state pursuant to subsection (6) of this section. Each major political party, minor political party, ballot issue committee that has an issue on the ballot, and coordinating entity may designate one person, who shall be allowed to witness all public tests and the counting of pretest votes. If an observer or designee hinders or disturbs the test process, the designated election official may remove the person from the test area. An observer or designee who has been removed from a public test may be barred from future tests. The absence of observers or designees shall not delay or stop the public test.

(c) The testing board shall convene and designate at least one member to represent the board during the testing, sign the necessary reports, and report to the board. The programs and ballots used for testing shall be attested to and sealed by the board and retained in the custody of the designated election official. The absence of a member of the testing board shall not delay or stop the test.

(d) Upon completion of the testing conducted pursuant to this section, the testing board or its representative and the representatives of the political parties, ballot issue committees, and coordinating entities who attended the test may witness the resetting of each device that passed the test to a preelection state of readiness and the sealing of each such device in order to secure its state of readiness.

(e) The testing board or its representative shall sign a written statement indicating the devices tested, the results of the testing, the protective counter numbers of each device, if applicable, the number of the seal attached to each device upon completion of the testing, any problems reported to the designated election official as a result of the testing, and whether each device tested is satisfactory or unsatisfactory.

(3) Notice of the fact that the public test will take place shall be posted in the designated public place for posting notices in the county for at least seven days before the public test. The notice shall indicate the general time frame during which the test may take place and the manner in which members of the public may obtain specific information about the time and place of the test. Nothing in this subsection (3) shall preclude the use of additional methods of providing information about the public test to members of the public.

(4) (a) If any tested device is found to have an error in tabulation, it shall be deemed unsatisfactory. For each device deemed unsatisfactory, the testing board shall attempt to determine the cause of the error, attempt to identify and test other devices that could reasonably be expected to have the same error, and test a number of additional devices sufficient to determine that all other devices are satisfactory. The cause of any error detected shall be corrected, and an errorless count shall be made before the voting equipment is approved. The test shall be repeated and errorless results achieved before official ballots are counted.

(b) If an error is detected in the operation or output of an electronic voting device, including an error in spelling or in the order of candidates on a ballot, the problem shall be reported to the testing board and the designated election official. The designated election official shall correct the error.

(c) A voting device deemed unsatisfactory shall be recoded, repaired, or replaced and shall be made available for retesting unless a sufficient number of tested backup devices is available to replace the unsatisfactory device. The backup device may not be used in the election unless the testing board or its representative determines that the device is satisfactory. The designated election official shall announce at the conclusion of the first testing the date, place, and time that an unsatisfactory device will be retested, or, at the option of the testing board, the designated election official shall notify by telephone each person who was present at the first testing of the date, place, and time of the retesting.

(5) The designated election official shall keep records of all previous testing of electronic and electromechanical tabulation devices used in any election. Such records shall be available for inspection and reference during public testing by any person in attendance. The need of the testing board for access to such records during the testing shall take precedence over the need of other attendees for access so that the work of the testing board will not be hindered. Records of testing shall include, for each device, the name of the person who tested the device and the date, place, time, and results of each test. Records of testing shall be retained as part of the official records of the election in which the device is used.

(6) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner of performing the logic and accuracy testing required by this section.

Source: L. 2005: Entire section added, p. 1404, § 27, effective June 6; entire section added, p. 1439, § 27, effective June 6. **L. 2007:** (1)(b) amended, p. 1779, § 17, effective June 1.

1-7-510. Election software code - escrow - definitions. (1) As used in this section, unless the context otherwise requires, "election setup records" means the electronic records generated by election tabulation software during election setup to define ballots, tabulation instructions, and other functions related to the election.

(2) At the conclusion of programming and after it has been determined that a voting system is in proper working order and ready for voting, the designated election official shall deposit a copy of the election setup records for a county, statewide, or congressional vacancy election with the secretary of state no later than 5:00 p.m. on the seventh day before the election.

(3) If the election setup records are modified or altered after they are submitted to the secretary of state, the designated election official shall immediately report the change to the secretary of state and deposit the modified election setup records with the secretary of state no later than noon on the day of the election.

(4) The secretary of state shall retain election setup records for six months, after which the secretary of state shall return the election setup records to the designated election official. The designated election official shall retain the election setup records for the period of time for which the designated election official is required to retain official election records.

(5) Election setup records deposited with the secretary of state shall not be used for any purpose, except as directed by the secretary of state or ordered by a court. The tape, diskette, cartridge, or other magnetic or electronic storage medium containing election setup records deposited with the secretary of state shall be kept in a secure location when not being used for an official purpose in accordance with this subsection (5).

(6) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., to implement this section.

(7) Notwithstanding any other provision of law, election setup records deposited with the secretary of state pursuant to this section shall not be public records for purposes of article 72 of title 24, C.R.S.

Source: L. 2005: Entire section added, p. 1406, § 27, effective June 6; entire section added, p. 1442, § 27, effective June 6.

1-7-511. Election software - voting equipment providers - escrow - definitions. (1) When a voting system provider submits an electronic or electromechanical voting system for certification pursuant to part 6 of article 5 of this title, the voting system provider shall place in escrow with the secretary of state or an independent escrow agent approved by the secretary of state one copy of the election software being certified and supporting documentation. The voting system provider shall place in escrow any subsequent changes to the escrowed election software or supporting documentation.

(2) An officer of the voting system provider with legal authority to bind the voting system provider shall sign a sworn affidavit that the election software in escrow is the same as the election software being used in its voting systems in this state. The officer shall ensure that the statement is true on a continuing basis.

(3) As an additional requirement for certification, the voting system provider shall deposit one copy of the election software with the national software reference library at the national institute of standards and technology.

(4) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner and procedures that voting system providers shall follow to comply with this section.

(5) As used in this section, unless the context otherwise requires, "election software" means the software to be installed or residing on election equipment firmware or on election management computers that controls election setup, vote recording, vote tabulation, and reporting.

(6) Notwithstanding any other provision of law, election software and supporting documentation placed in escrow in accordance with this section shall not be public records for purposes of article 72 of title 24, C.R.S.

Source: L. 2005: Entire section added, p. 1407, § 27, effective June 6; entire section added, p. 1442, § 27, effective June 6.

1-7-512. Voting system providers - duties. (1) A voting system provider under contract to provide a voting system to a political subdivision in this state shall:

(a) Notify the secretary of state of the installation of any hardware, firmware, or software prior to the installation or of any change in the election software or the voting system;

(b) Place in escrow with the secretary of state or an independent escrow agent approved by the secretary of state, immediately after the installation of election software, one copy of the state certified election software that was installed in each political subdivision, along with supporting documentation;

(c) Place in escrow with the secretary of state any subsequent changes to the escrowed election software or supporting documentation;

(d) Provide to the secretary of state a sworn statement by an officer of the voting system provider with legal authority to bind the voting system provider attesting that the election software in escrow is the same as the election software certified for use in its voting systems in this state, and ensure that the statement is true on a continuing basis;

(e) Notify the secretary of state and the designated election official of any political subdivision using its voting system of any defect in the same system known to occur anywhere; and

(f) Notify the secretary of state and the designated election official of any political subdivision using its voting system of any change in the election software or the voting system.

(2) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., establishing procedures for voting system providers to comply with this section.

(3) As used in this section, unless the context otherwise requires, "election software" means the software to be installed or residing on election equipment firmware or on election management computers that controls election setup, vote recording, vote tabulation, and reporting.

Source: L. 2005: Entire section added, p. 1408, § 27, effective June 6; entire section added, p. 1443, § 27, effective June 6.

1-7-513. Voting equipment - records. (1) The designated election official shall maintain separate, detailed records for each component of a voting system used in an election. Such records shall include, but not be limited to, the manufacturer, make, model, serial number, hardware, firmware, software version or release number, date of acquisition, description of services, repairs, maintenance, upkeep, and version upgrades, and date of performance of such services.

(2) The secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner of maintenance of records required by this section.

Source: L. 2005: Entire section added, p. 1409, § 27, effective June 6; entire section added, p. 1444, § 27, effective June 6.

1-7-514. Random audit. (1) (a) (I) Following each primary, general, coordinated, or congressional district vacancy election, the secretary of state shall publicly initiate a manual random audit to be conducted by each county. Unless the secretary approves an alternative method for a particular county that is based on a proven statistical sampling plan and will achieve a higher level of statistical confidence, the secretary shall randomly select not less than five percent of the voting devices used in each county to be audited; except that, where a central count voting device is in use in the county, the rules promulgated by the secretary pursuant to subsection (5) of this section shall require an audit of a specified percentage of ballots counted within the county.

(II) For an election taking place in a county prior to the date the county has satisfied the requirements of section 1-5-802, the audit shall be for the purpose of comparing the manual tallies of the ballots counted by each voting device selected for each such audit with the corresponding tallies recorded directly by each such device.

(III) For an election taking place in a county on or after the date the county has satisfied the requirements of section 1-5-802, the audit shall be conducted for the purpose of comparing the manual tallies of the voter-verified paper records produced or employed by each voting device selected for such audit with the corresponding ballot tallies recorded directly by each such device in the original election tally.

(b) To the extent practicable, no voting device that is used for the random audit required by paragraph (a) of this subsection (1) shall be used for conducting the testing of voting devices for recount purposes required by section 1-10.5-102 (3) (a).

(2) (a) Upon completion of the audit required by subsection (1) of this section, if there is any discrepancy between the manual tallies, as specified in accordance with the requirements of subparagraph (II) or (III) of paragraph (a) of subsection (1) of this section, as applicable, of the voting device selected for the audit, and the corresponding tallies recorded by such devices, and the discrepancy is not able to be accounted for by voter error, the county clerk and recorder, in consultation with the canvass board of the county established pursuant to section 1-10-101, shall investigate the discrepancy and shall take such remedial action as necessary in accordance with its powers under this title.

(b) Upon receiving any written complaint from a registered elector from within the county containing credible evidence concerning a problem with a voting device, the canvass board along with the county clerk and recorder shall investigate the complaint and take such remedial action as necessary in accordance with its powers under this title.

(c) The canvass board and the county clerk and recorder shall promptly report to the secretary of state a description of the audit process undertaken, including any initial, interim, and final results of any completed audit or investigation conducted pursuant to paragraph (a) or (b) of this subsection (2).

(3) The secretary of state shall post the reports of any completed audit or investigation received pursuant to paragraph (c) of subsection (2) of this section on the official website of the department of state not later than twenty-four hours after receiving the results of the completed audit or investigation. The clerk and recorder of the affected county may timely post the results of the completed audit or investigation on the official website of the county. The secretary shall publish once in a newspaper of

general circulation throughout the state notification to the public that the results have been posted on the department's website.

(4) Any audit conducted in accordance with the requirements of this section shall be observed by at least two members of the canvass board of the county.

(5) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting any audit required by this section. The rules shall account for:

- (a) The number of ballots cast in the county;
- (b) An audit of each type of voting device utilized by the county;
- (c) The confidentiality of the ballots cast by the electors; and
- (d) An audit of the voting on each office, ballot issue, and ballot question in the election.

Source: L. 2005: Entire section added, p. 1409, § 27, effective June 6; entire section added, p. 1444, § 27, effective June 6. L. 2007: (1)(a)(I), (1)(a)(III), (2)(c), and (3) amended and (5)(d) added, pp. 1979, 1980, §§ 28, 29, effective August 3.

Editor's note: Subsections (1)(a)(I), (1)(a)(III), (2)(c), (3), and (5)(d) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

PART 6

ELECTION RETURNS

1-7-601. Judges' certificate and statement. (1) As soon as all the votes have been read and counted, either at the precincts or at the electronic balloting counting centers, the election judges shall make a certificate for each precinct, stating the name of each candidate, the office for which that candidate received votes, and stating the number of votes each candidate received. The number shall be expressed in numerical figures. The entry shall be made, as nearly as circumstances will permit, in the following form:

"At an election held, in precinct, in the county of and state of Colorado, on the day of in the year, the following named candidates received the number of votes annexed to their respective names for the following described offices: Total number of ballots or votes cast was A.B. and E.F. had 72 votes for governor and lieutenant governor; C.D. and G.H. had 69 votes for governor and lieutenant governor; J.K. had 68 votes for representative in congress; L.M. had 70 votes for representative in congress; N.O. had 72 votes for state representative; P.Q. had 71 votes for state representative; R.S. had 84 votes for sheriff; T.W. had 60 votes for sheriff; (and the same manner for any other persons voted for).

Certified by us:

A.B.)

C.D.)

E.F.)

Election Judges"

(1.5) In addition to the information required by subsection (1) of this section, the certificate prepared by the election judges for each precinct shall state the ballot title and submission clause of any ballot issue or ballot question voted upon in the election and the number of votes counted for and against the ballot issue or ballot question.

(2) In addition, the election judges shall make a written statement showing the number of ballots voted, making a separate statement of the number of unofficial and substitute ballots voted, the number of ballots delivered to electors, the number of spoiled ballots, the number of ballots not delivered to electors, and the number of ballots returned, identifying and specifying the same. All unused ballots, spoiled ballots, and stubs of ballots voted shall be returned with the statement.

(3) Any judges' certificates and statements may be combined into one document if so directed by the designated election official.

Source: L. 92: Entire article R&RE, p. 750, § 9, effective January 1, 1993. L. 93: (3) added, p. 1422, § 78, effective July 1. L. 2007: (1) amended and (1.5) added, p. 1980, § 30, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-310 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-115 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Subsections (1) and (1.5) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 369, 370.

C.J.S. See 29 C.J.S., Elections, §§ 371, 372.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The judges are required to make a certificate in such form that it could not be changed except it would show evidence of having been tampered with. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Therefore, tally sheets are insufficient to contradict certificates. In the face of this section it certainly was not the purpose of the general assembly to allow mere tally sheets, which are not certified, contain nothing more than strokes of pen or pencil with respect to the number of votes cast for any candidate, and can be readily changed, to be taken as evidence sufficient to contradict the certificates in case of a discrepancy between such certificates and the tally sheets. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Furthermore, irregularities committed by judges of election in the certification of their returns do not invalidate the returns unless they are in such a state as to render it impossible to ascertain therefrom the vote and for whom cast. Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907).

And such returns must be canvassed and certified by the canvassing board. Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907).

1-7-602. Judges to post returns. At any election at a polling place where voting is by paper ballot, voting machine, or electronic or electromechanical voting system, the election judges shall make an abstract of the count of votes, which abstract shall contain the names of the offices, names of the candidates, ballot titles, and submission clauses of all initiated, referred, or other ballot issues voted upon and the number of votes counted for or against each candidate or ballot issue. The abstract shall be posted in a conspicuous place that can be seen from the outside of the polling place immediately upon completion of the counting. The abstract may be removed at any time after forty-eight hours following the election. Suitable blanks for the abstract required by this section shall be prepared, printed, and furnished to all election judges at the same time and in the same manner as other election supplies.

Hence, where the judges did not receive the pollbooks required in time for use on election day and thereupon kept a list of the voters and made a tally of the votes on sample ballots, and the judges, after certifying to the result of the election, although not in the manner and form prescribed, delivered the returns to the county clerk within a few days after election, but the board of canvassers refused to count and canvass said returns, although no other returns were received from that precinct, solely because the certificates and oaths were not in the form and the returns upon the proper blanks, such irregularities did not invalidate the returns, and it further appearing that the precinct judges in good faith undertook to certify the true result of the precinct election and that the result could be ascertained therefrom, it became the duty of the board to canvass such returns and to issue certificates in accordance with the result. Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907).

Injunction lies to prevent judges of election from committing or permitting fraud. The state upon the relation of the attorney general may invoke the powers of the supreme court for a writ of injunction to prevent the judges of election and other officers in control of an election from committing, and from permitting others to commit, frauds at elections and to secure a judicial enforcement of the statutes relating to elections so as to prevent the perpetration of such frauds. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Such questions being purely judicial and not political. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

Source: L. 92: Entire article R&RE, p. 750, § 9, effective January 1, 1993. **L. 2004:** Entire section amended, p. 1359, § 23, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-311 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-117 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368. **C.J.S.** See 29 C.J.S., Elections, § 373.

1-7-603. Preparation of election returns. If any designated election official wishes to count the votes cast at a location or by a method other than authorized by this code, the designated election official may present a plan, for approval by the secretary of state, that delineates the process for assuring accuracy and confidentiality of counting. The plan shall be submitted to the secretary of state and approved no later than forty-five days before the election at which the plan is to be implemented.

Source: L. 93: Entire section added, p. 1422, § 79, effective July 1. **L. 99:** Entire section amended, p. 775, § 52, effective May 20.

PART 7

DELIVERY OF ELECTION RETURNS

1-7-701. Delivery of election returns, ballot boxes, and other election papers. When all the votes have been read and counted, the election judges selected in accordance with section 1-6-109.5 shall deliver to the designated election official the certificate and statement required by section 1-7-601, ballot boxes and all keys to the boxes, paper tapes, "proms" or other electronic devices, the registration book, pollbooks, accounting forms, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, and other election papers and supplies. The delivery shall be made at once and with all convenient speed, and informality in the delivery shall not invalidate the vote of any precinct when delivery has been made previous to the completion of the official abstract of the votes by the board of canvassers. The designated election official shall give a receipt for all items delivered.

Source: L. 92: Entire article R&RE, p. 751, § 9, effective January 1, 1993. **L. 98:** Entire section amended, p. 586, § 27, effective April 30.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-7-601 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-5-116 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

PART 8

PRESERVATION OF BALLOTS AND ELECTION RECORDS

1-7-801. Ballots preserved. The designated election official shall remove the ballots from the ballot box after the time period for election contests has passed and preserve the ballots as election records pursuant to section 1-7-802.

Source: L. 92: Entire article R&RE, p. 751, § 9, effective January 1, 1993. **L. 93:** Entire section R&RE, p. 1422, § 80, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-701 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-118 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 356.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Fraud must be shown to require ballot box opening. Where the court, in a contested election case in which fraud was alleged, refused to require the opening of the ballot boxes and a recounting of the ballots until some evidence of the fraud alleged was introduced, its discretion was, under the circumstances, commendably exercised.

Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897).

And court may decline ruling when ballots destroyed. When, pending an appeal in the matter of a contested election, an event occurs, such as the destruction of the ballots cast at the election, which under the circumstances of the case, renders any ruling which might be made ineffectual, the court may decline to pass upon any of the controverted questions. Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897).

1-7-802. Preservation of election records. The designated election official shall be responsible for the preservation of any election records for a period of at least twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later. Unvoted ballots may be destroyed after the time for a challenge to the election has passed. If a federal candidate was on the ballot, the voted ballots and any other required election materials shall be kept for at least twenty-five months after the election.

Source: L. 92: Entire article R&RE, p. 752, § 9, effective January 1, 1993. **L. 93:** Entire section amended, p. 1422, § 81, effective July 1. **L. 99:** Entire section amended, p. 775, § 53, effective May 20.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-7-702 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-5-119 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

PART 9

BALLOT ISSUE NOTICES

Editor's note: This part 9 was originally enacted in 1994. This part was amended in 1996, resulting in the relocation of provisions. For the law prior to the 1996 amendments, consult the 1995 cumulative supplement to the 1980 replacement volume.

1-7-901. Receipt of comments concerning ballot issues. (1) Each political subdivision shall accept written comments concerning ballot issues in accordance with this section.

(2) All comments filed in writing will be received and kept on file with the designated election official for the political subdivision submitting to its eligible electors the ballot issue to which the comments pertain. However, only those comments that are filed by persons eligible to vote in the political subdivision submitting the ballot issue to its electors must be summarized in the ballot issue notice. The filed comments shall be retained by the designated election official as election records.

(3) To be summarized in the ballot issue notice, the comments shall address a specific ballot issue and shall include a signature and an address where the signor is registered to vote and shall be filed with the designated election official for the political subdivision and not the county clerk and recorder of the county in which the political subdivision is located unless the issue is a county issue for which the county clerk and recorder is the designated election official.

(4) Since section 20 (3) (b) (v) of article X of the state constitution requires that comments pertaining to a ballot issue be filed by forty-five days before the election and since such day is always a Saturday, all comments shall be filed by the end of the business day on the Friday before the forty-fifth day before the election.

Source: L. 96: Entire part amended with relocations, p. 1747, § 44, effective July 1. L. 97: (4) amended, p. 1099, § 1, effective May 27. L. 99: (4) amended, p. 775, § 54, effective May 20.

1-7-902. Preparation of fiscal information. A governing body submitting a referred measure, or its designee, shall be responsible for providing to its designated election official the fiscal information that must be included in the ballot issue notice. For political subdivisions, the governing body shall be the board that authorized submission of the ballot issue to the electorate.

Source: L. 96: Entire part amended with relocations, p. 1747, § 44, effective July 1. L. 2000: Entire section amended, p. 299, § 9, effective August 2.

1-7-903. Preparation of written comments. (1) For referred measures, the designated election official shall summarize the filed comments in favor of and in opposition to the ballot issue for the ballot issue notice.

(2) For initiated measures, the petition representatives shall be solely responsible for summarizing all comments filed in favor of the ballot issue. The designated election official shall summarize all comments filed in opposition to the ballot issue.

(3) Petition representatives required to summarize favorable comments in favor of their petition shall submit the summary in typewritten form to the designated election official for the jurisdiction in which the petition is presented no later than forty-three days before the election. If a summary is not filed by the petition representatives within the time allowed, the designated election official shall print the following in the ballot issue notice where the summary would appear: "No summary was filed by the statutory deadline."

(4) If no comments are filed in opposition to or in support of a ballot issue, the designated election official shall not prepare any summaries and shall state substantially the following in the ballot issue notice where the summary or summaries would appear: "No comments were filed by the constitutional deadline."

(5) The provisions of this section shall not apply to a statewide ballot issue that is subject to the provisions of section 1 (7.5) of article V of the state constitution.

Source: L. 96: Entire part amended with relocations, p. 1747, § 44, effective July 1. L. 97: (3) amended, p. 1099, § 2, effective May 27. L. 99: (3) amended, p. 776, § 55, effective May 20.

1-7-904. Transmittal of notices. Notwithstanding the provision for independent mail ballot elections in section 1-7-116 (1), the designated election official or the official's designee for a political subdivision conducting an election in November shall prepare and deliver to the county clerk and

recorder for the county or counties in which the political subdivision is located no later than forty-two days before the election the full text of any required ballot issue notices.

Source: L. 96: Entire part amended with relocations, p. 1748, § 44, effective July 1. **L. 97:** Entire section amended, p. 1100, § 3, effective May 27. **L. 99:** Entire section amended, p. 776, § 56, effective May 20. **L. 2000:** Entire section amended, p. 299, § 10, effective August 2.

1-7-905. Preparation of notices. (1) For November elections, the county clerk and recorder shall be responsible for placing the ballot issue notices received from the various political subdivisions participating in the election in the proper order in the ballot issue notice packet. As nearly as practicable, the notice shall be in the order the ballot issues will appear on the ballot. The ballot issue notice shall be followed by a certification by the county clerk and recorder that the ballot issue notices are complete as submitted by the political subdivisions. No additional information shall be included as part of the ballot issue notice except as may be required by law. A general disclaimer may precede or follow the ballot issue notice which may state: "The information contained in this notice was prepared by persons required by law to provide summaries of ballot issues and fiscal information."

(2) The designated election officials of overlapping political subdivisions conducting an election other than in November shall confer concerning the preparation of the ballot issue notice no later than forty days prior to the date of the election. The political subdivisions conducting the election shall provide for preparation of any required ballot issue notice package by agreement in a form substantially as provided in section 1-7-116.

Source: L. 96: Entire part amended with relocations, p. 1748, § 44, effective July 1. **L. 99:** (2) amended, p. 776, § 57, effective May 20.

1-7-905.5. Form of notice. (1) The ballot issue notice shall begin with the words "All registered voters", regardless of whether the electors of the political subdivision must be registered electors to be eligible to vote in the election, and shall end at the conclusion of the summary of comments. Any information included pursuant to section 1-5-206, information concerning procedure for a mail ballot election, ballot, polling place, or other information included with the ballot issue notice prior to the words "All registered voters" or after the conclusion of the summary of comments shall not be deemed to be part of the ballot issue notice.

(2) Ballot issue notices are not election materials that must be provided in a language other than English.

Source: L. 96: Entire part amended with relocations, p. 1748, § 44, effective July 1.

1-7-906. Mailing of notices. (1) For November elections, the county clerk and recorder as coordinated election official shall mail the ballot issue notice packet to each address of one or more active registered electors who reside in the county or portions of the county in which registered voters of those districts submitting ballot issues reside.

(2) The designated election official for the various political subdivisions shall be responsible for mailing the required notice to each address of one or more active registered electors who do not reside within the county or counties where the political subdivision is located.

(3) The political subdivisions shall by agreement, in a form substantially as provided in sections 1-7-116 and 1-7-905, provide for mailing of any required ballot issue notice package for elections conducted other than in November.

Source: L. 96: Entire part amended with relocations, p. 1749, § 44, effective July 1.

1-7-907. Ballot issue notice. The ballot issue notice shall be prepared and mailed in substantial compliance with section 20 of article X of the state constitution, the provisions of this title, and the rules and regulations of the secretary of state.

Source: L. 96: Entire part amended with relocations, p. 1749, § 44, effective July 1.

Editor's note: This section was formerly numbered as 1-5-206.5.

1-7-908. Additional notice - election to create financial obligation. (1) (a) A district submitting a ballot issue concerning the creation of any debt or other financial obligation at an election in the district shall post notice of the following information on the district's website or, if the district does not maintain a website, at the district's chief administrative office no later than twenty days before the election:

(I) The district's ending general fund balance for the last four fiscal years and the projected ending general fund balance for the current fiscal year;

(II) A statement of the total revenues in and expenditures from the district's general fund for the last four fiscal years and the projected total revenues in and expenditures from the general fund for the current fiscal year;

(III) The amount of any debt or other financial obligation incurred by the district for each of the last four fiscal years for cash flow purposes that has a term of not more than one year and the amount of any such financial obligation projected for the current fiscal year;

(IV) A statement as to whether the district's emergency reserve required by section 20 (5) of article X of the state constitution has been fully funded by cash or investments for the current fiscal year and each of the last four fiscal years and an identification of the funds or accounts in which the reserve is currently held. If the reserve has not been fully funded, the notice shall include a statement of the reasons the reserve has not been fully funded.

(V) The location or locations at which any person may review the district's audited financial statements for the last four fiscal years, any management letters that have been made public and have been provided to the district by its auditors in connection with the preparation of its audits for the last four fiscal years, and the district's budget for the current fiscal year.

(b) If the debt or other financial obligation for which the district is seeking voter approval is to be paid from a revenue source that is accounted for in a fund other than the district's general fund, the information required by subparagraphs (I) and (II) of paragraph (a) of this subsection (1) shall also be made available for such other fund.

(c) The information required by subparagraphs (I), (II), (III), and (IV) of paragraph (a) of this subsection (1) shall be based upon audited figures. If no audited figures are available, the information shall be based upon estimated figures.

(2) The notice required by this section shall be in addition to and shall not substitute, replace, or be combined with any other notice required by law.

(3) For purposes of this section, "district" shall have the same meaning as set forth in section 20 (2) (b) of article X of the state constitution.

Source: L. 2003: Entire section added, p. 748, § 1, effective August 6.

ARTICLE 7.5

Mail Ballot Elections

Editor's note: This article was originally enacted in 1990, effective January 1, 1991. The substantive provisions of this article were repealed and reenacted in 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws and annual supplements to the original volume of C.R.S. 1973 prior to 1992.

Law reviews: For article, "Voting Under Colorado's Mail Ballot Election Act", see 21 Colo. Law. 941 (1992).

1-7.5-101.	Short title.	1-7.5-107.3.	Verification of signatures -
1-7.5-102.	Legislative declaration.		November coordinated
1-7.5-103.	Definitions.		elections.
1-7.5-104.	Mail ballot elections - optional.	1-7.5-107.5.	Counting mail ballots.
1-7.5-105.	Preelection process.	1-7.5-108.	Mail-in ballots.
1-7.5-106.	Secretary of state - duties and	1-7.5-109.	Write-in candidates.
	powers.	1-7.5-110.	Challenges.
1-7.5-107.	Procedures for conducting mail	1-7.5-111.	Report to the general assembly.
	ballot election - first-time voters		(Repealed)
	casting a mail ballot after	1-7.5-112.	Repeal of article. (Repealed)
	having registered by mail to		
	vote.		

1-7.5-101. Short title. This article shall be known and may be cited as the "Mail Ballot Election Act".

Source: L. 92: Entire article R&RE, p. 752, § 10, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-101 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

ANNOTATION

The Mail Ballot Election Act is constitutional because there is a compelling state interest in encouraging

increased voter participation and mail ballot elections serve to meet that interest. *Bruce v. City of Colo. Springs*, 971 P.2d 679 (Colo. App. 1998).

1-7.5-102. Legislative declaration. The general assembly hereby finds, determines, and declares that self-government by election is more legitimate and better accepted as voter participation increases. The general assembly further finds, determines, and declares that mail ballot elections are cost-efficient and have not resulted in increased fraud. By enacting this article, the general assembly hereby concludes that it is appropriate to provide for mail ballot elections under specified circumstances.

Source: L. 92: Entire article R&RE, p. 752, § 10, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-102 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-103. Definitions. As used in this article, unless the context otherwise requires:
(1) "Designated election official" means official as defined in section 1-1-104 (8).
(2) "Election" means any election under the "Uniform Election Code of 1992" or the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.

(3) "Election day" means the date either established by law or determined by the governing body of the political subdivision conducting the election, to be the final day on which all ballots are determined to be due, and the date from which all other dates in this article are set.

(4) "Mail ballot election" means an election for which eligible electors may cast ballots by mail and in accordance with this article in an election that involves only nonpartisan candidates or ballot questions or ballot issues.

(5) "Mail ballot packet" means the packet of information provided by the designated election official to eligible electors in the mail ballot election. The packet includes the ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope.

(6) "Political subdivision" means a governing subdivision of the state, including counties, municipalities, school districts, and special districts.

(7) "Return envelope" means an envelope that is printed with spaces for the name and address of, and a self-affirmation to be signed by, an eligible elector voting in a mail ballot election, that contains a secrecy envelope and ballot for the elector, and that is designed to allow election officials, upon examining the signature, name, and address on the outside of the envelope, to determine whether the enclosed ballot is being submitted by an eligible elector who has not previously voted in that particular election.

(8) "Secrecy envelope" means the envelope used for a mail ballot election that contains the eligible elector's ballot for the election, and that is designed to conceal and maintain the confidentiality of the elector's vote until the counting of votes for that particular election.

Source: L. 92: Entire article R&RE, p. 752, § 10, effective January 1, 1993. L. 94: (4) amended, p. 1166, § 38, effective July 1. L. 2003: (5) and (7) amended, p. 1277, § 4, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is similar to 1-7.5-103 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

Cross references: For the "Uniform Election Code of 1992", see articles 1 to 13 of this title.

1-7.5-104. Mail ballot elections - optional. (1) If the governing board of any political subdivision determines that an election shall be by mail ballot, the designated election official for the political subdivision shall conduct any election for the political subdivision by mail ballot under the supervision of the secretary of state and shall be subject to rules which shall be promulgated by the secretary of state.

(2) Notwithstanding the provisions of subsection (1) of this section, a mail ballot election shall not be held for:

(a) Elections or recall elections that involve partisan candidates;

(b) Elections held in conjunction with, or on the same day as, a primary or congressional vacancy election.

(3) Notwithstanding any other provision of law to the contrary concerning the type of election to be held, elections by mail ballot shall be conducted as provided in this article.

Source: L. 92: Entire article R&RE, p. 753, § 10, effective January 1, 1993. L. 93: (2) amended, p. 1422, § 82, effective July 1. L. 94: (1) amended, p. 1166, § 39, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-104 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-105. Preelection process. (1) The designated election official responsible for conducting an election that is to be by mail ballot pursuant to section 1-7.5-104 (1) shall notify the secretary of state no later than fifty-five days prior to the election, unless the election is a regular special district election, in which case the designated election official shall notify the secretary of state no later than sixty-five

days prior to the election. The notification shall include a proposed plan for conducting the mail ballot election, which may be based on the standard plan adopted by the secretary of state.

(2) The secretary of state shall approve or disapprove the written plan for conducting a mail ballot election, in accordance with section 1-7.5-106, within fifteen days after receiving the plan and shall provide a written notice to the affected political subdivision, unless the election is a regular special district election, in which case the secretary of state shall approve or disapprove the written plan within twenty-five days after receiving the plan.

(3) The designated election official shall supervise the distributing, handling, counting of ballots, and the survey of returns in accordance with rules promulgated by the secretary of state as provided in section 1-7.5-106 (2) and shall take the necessary steps to protect the confidentiality of the ballots cast and the integrity of the election.

(4) No elector information shall be delivered in the form of a sample ballot.

Source: L. 92: Entire article R&RE, p. 753, § 10, effective January 1, 1993. L. 93: (1) amended, p. 1423, § 83, effective July 1. L. 94: (1) amended, p. 1166, § 40, effective July 1. L. 95: (1) amended, p. 840, § 61, effective July 1. L. 2007: (1) and (2) amended, p. 922, § 1, effective May 17.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-105 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-106. Secretary of state - duties and powers. (1) In addition to any other duties prescribed by law, the secretary of state, with advice from election officials of the several political subdivisions, shall:

(a) Prescribe the form of materials to be used in the conduct of mail ballot elections; except that all mail ballot packets shall include a ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope;

(b) Establish procedures for conducting mail ballot elections; except that the procedures shall be consistent with section 1-7.5-107;

(c) Supervise the conduct of mail ballot elections by the election officials as provided in section 1-7.5-105 (3).

(2) In addition to other powers prescribed by law, the secretary of state may adopt rules governing procedures and forms necessary to implement this article and may appoint any county clerk and recorder as an agent of the secretary to carry out the duties prescribed in this article.

Source: L. 92: Entire article R&RE, p. 754, § 10, effective January 1, 1993. L. 2001: (1)(a) amended, p. 1003, § 10, effective August 8. L. 2003: (1)(a) amended, p. 1278, § 5, effective April 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-106 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

ANNOTATION

Tri-fold envelope that conceals the voter's mark when folded in a certain way satisfies the requirement that a secrecy envelope be included with

mail ballot packets. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

1-7.5-107. Procedures for conducting mail ballot election - first-time voters casting a mail ballot after having registered by mail to vote. (1) Official ballots shall be prepared and all other preelection procedures followed as otherwise provided by law or rules promulgated by the secretary of state; except that mail ballot packets shall be prepared in accordance with this article.

(2) (a) Except for coordinated elections conducted as a mail ballot election where the county clerk and recorder is the coordinated election official, no later than thirty days prior to election day, the

county clerk and recorder shall submit to the designated election official of the political subdivision conducting the mail ballot election a full and complete preliminary list of registered electors. For special district mail ballot elections, the county clerk and recorder and county assessor of each county in which a special district is located shall certify and submit to the designated election official a list of property owners and a list of registered electors residing within the affected district.

(b) No later than twenty days prior to election day, the county clerk and recorder and county assessor required to submit a preliminary list in accordance with paragraph (a) of this subsection (2) shall submit to the appropriate authority a supplemental list of the names of eligible electors or property owners whose names were not included on the preliminary list.

(c) All lists of registered electors and lists of property owners provided to a designated election official under this section shall include the last mailing address of each elector.

(2.5) (a) No later than twenty days before an election, the designated election official, or the coordinated election official if so provided by an intergovernmental agreement, shall provide notice by publication of a mail ballot election conducted pursuant to the provisions of this article, which notice shall state, as applicable for the particular election for which the notice is provided, the items set forth in section 1-5-205 (1) (a) to (1) (d).

(b) The notice required to be given by this subsection (2.5) shall be in lieu of the notice requirements set forth in sections 1-5-205 (1) and 31-10-501 (1), C.R.S., as applicable for the particular election for which such notice is required.

(3) (a) Not sooner than twenty-five days before an election, and no later than fifteen days before an election, the designated election official shall mail to each active registered elector, at the last mailing address appearing in the registration records and in accordance with United States postal service regulations, a mail ballot packet, which shall be marked "DO NOT FORWARD. ADDRESS CORRECTION REQUESTED", or any other similar statement that is in accordance with United States postal service regulations; except that with prior approval from the secretary of state, the packets shall be sent no later than ten days before election day.

(b) The ballot or ballot label shall contain the following warning:

"WARNING:

Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both."

(b.5) (I) The return envelope shall have printed on it a self-affirmation substantially in the following form:

"I state under penalty of perjury that I am an eligible elector; that my signature, name, and address are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992".

.....

.....

Date

Signature of voter"

(II) The signing of the self-affirmation on the return envelope shall constitute an affirmation by the eligible elector, under penalty of perjury, that the facts stated in the self-affirmation are true. If the eligible elector is unable to sign, the eligible elector may affirm by making a mark on the self-affirmation, with or without assistance, witnessed by another person.

(c) No sooner than twenty-five days prior to election day, nor later than 7 p.m. on election day, mail ballots shall be made available at the designated election official's office, or the office designated in the mail ballot plan filed with the secretary of state, for eligible electors who are not listed or who are

listed as "Inactive" on the county voter registration records or, for special district mail ballot elections, on the list of property owners or the registration list but who are authorized to vote pursuant to section 32-1-806, C.R.S., or other applicable law.

(d) (I) An eligible elector may obtain a replacement ballot if the ballot was destroyed, spoiled, lost, or for some other reason not received by the eligible elector. An eligible elector may obtain a ballot if a mail ballot packet was not sent to the elector because the eligibility of the elector could not be determined at the time the mail ballot packets were mailed. In order to obtain a ballot in such cases, the eligible elector must sign a sworn statement specifying the reason for requesting the ballot. The statement shall be presented to the designated election official no later than 7 p.m. on election day. The designated election official shall keep a record of each ballot issued in accordance with this paragraph (d) together with a list of each ballot obtained pursuant to paragraph (c) of this subsection (3).

(II) A designated election official shall not transmit a mail ballot packet under this paragraph (d) unless a sworn statement requesting the ballot is received on or before election day. A ballot may be transmitted directly to the eligible elector requesting the ballot at the designated election official's office or the office designated in the mail ballot plan filed with the secretary of state or may be mailed to the eligible elector at the address provided in the sworn statement. Ballots may be cast no later than 7 p.m. on election day.

(3.5) (a) Unless otherwise provided by section 1-2-501 (1.5), the requirements of this subsection (3.5) shall apply to a person who registered to vote by mail in accordance with part 5 of article 2 of this title and who:

(I) Has not previously voted in an election in Colorado; or

(II) Is reregistering to vote after moving from one county in this state to another and the election in which the person intends to vote takes place prior to the creation by the department of state of a computerized statewide voter registration list that satisfies the requirements of part 3 of article 2 of this title.

(b) Any person who matches either of the descriptions specified in subparagraph (I) or (II) of paragraph (a) of this subsection (3.5) and intends to cast his or her ballot by mail in accordance with this article shall submit with his or her mail ballot a copy of identification within the meaning of section 1-1-104 (19.5).

(c) The designated election official shall include with the mail ballot packet required by paragraph (a) of subsection (3) of this section written instructions advising an elector who matches the description specified in paragraph (a) of this subsection (3.5) of the manner in which the elector shall be in compliance with the requirements contained in paragraph (a) of this subsection (3.5).

(d) Any person who desires to cast his or her ballot by mail but does not satisfy the requirements of paragraph (c) of this subsection (3.5) may cast such ballot by mail and the ballot shall be treated as a provisional ballot in accordance with the requirements of article 8.5 of this title.

(e) The requirements of this subsection (3.5) shall be implemented by state and local election officials in a uniform and nondiscriminatory manner.

(f) Notwithstanding any other provision of law, the requirements of this subsection (3.5) shall not apply to any person who is:

(I) Entitled to vote by absentee ballot under the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.;

(II) Provided the right to vote otherwise than in person under section (b) (2) (B) (ii) of the federal "Voting Accessibility for the Elderly and Handicapped Act", 42 U.S.C. sec. 1973ee-1; or

(III) Entitled to vote otherwise than in person under any other federal law.

(4) (a) Upon receipt of a ballot, the eligible elector shall mark the ballot, sign and complete the self-affirmation on the return envelope, enclose identification if required by subsection (3.5) of this section, and comply with the instructions provided with the ballot.

(b) The eligible elector may return the marked ballot to the designated election official by United States mail or by depositing the ballot at the office of the official or any place designated by the

official. The ballot must be returned in the return envelope. If an eligible elector returns the ballot by mail, the elector must provide postage. The ballot shall be received at the office of the designated election official or a designated depository, which shall remain open until 7 p.m. on election day. For an election coordinated by the county clerk and recorder, the depository shall be designated by the county clerk and recorder and located in a secure place under the supervision of a municipal clerk, an election judge or a member of the clerk and recorder's staff. For an election not coordinated by the county clerk and recorder, the depository shall be designated by the designated election official and located in a secure place under the supervision of the designated election official, an election judge, or another person designated by the designated election official.

(c) and (d) Repealed.

(5) (a) Once the ballot is returned, an election judge shall first qualify the submitted ballot by comparing the information on the return envelope with the registration records to determine whether the ballot was submitted by an eligible elector who has not previously voted in the election. If the ballot so qualifies and is otherwise valid, the election judge shall indicate in the pollbook that the eligible elector cast a ballot and deposit the ballot in an official ballot box.

(b) If the return envelope received from an eligible elector described in subsection (3.5) of this section does not contain identification, the ballot shall be treated as a provisional ballot and shall be verified and counted in accordance with article 8.5 of this title.

(c) For November coordinated elections only, the signature of the eligible elector on the return envelope shall be compared with the signature of the eligible elector on file in the office of the county clerk and recorder in accordance with section 1-7.5-107.3.

(6) All deposited ballots shall be counted as provided in this article and by rules promulgated by the secretary of state. A mail ballot shall be valid and counted only if it is returned in the return envelope, the self-affirmation on the return envelope is signed and completed by the eligible elector to whom the ballot was issued, and the information on the return envelope is verified in accordance with subsection (5) of this section. Mail ballots shall be counted in the same manner provided by section 1-7-307 for counting paper ballots or section 1-7-507 for counting electronic ballots. If the election official determines that an eligible elector to whom a replacement ballot has been issued has voted more than once, the first ballot returned by the elector shall be considered the elector's official ballot. Rejected ballots shall be handled in the same manner as provided in section 1-8-310.

Source: L. 92: Entire article R&RE, p. 754, § 10, effective January 1, 1993. L. 93: (3)(c) and (5) amended, p. 1767, § 10, effective June 6; (2)(b) amended, p. 1423, § 84, effective July 1. L. 94: (2)(a), (3)(c), (3)(d), and (4)(b) amended, p. 1167, § 41, effective July 1. L. 95: (2), (3)(a), (3)(d), and (5) amended, p. 841, § 62, effective July 1. L. 96: (2)(b) and (6) amended, pp. 1749, 1774, §§ 45, 79, effective July 1. L. 97: (3)(a) and (3)(c) amended, p. 186, § 6, effective August 6. L. 99: (2.5) added, p. 776, § 58, effective May 20. L. 2001: (3)(b.5) added and (6) amended, pp. 1003, 1004, §§ 11, 12, effective August 8. L. 2002: (4)(b) amended, p. 1634, § 17, effective June 7. L. 2003: (3)(b.5), (4), (5), and (6) amended, p. 1278, § 6, effective April 22; (3.5) added, p. 2078, § 15, effective May 22. L. 2004: (4)(a) and (5)(b) amended and (4)(c) and (4)(d) repealed, pp. 1053, 1054, §§ 6, 9, effective May 21. L. 2005: (3.5)(d) and (5)(b) amended, p. 1410, § 28, effective June 6; (3.5)(d) and (5)(b) amended, p. 1445, § 28, effective June 6. L. 2006: IP(3.5)(a) amended, p. 2033, § 13, effective June 6. L. 2007: (6) amended, p. 1981, § 31, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is similar to 1-7.5-107 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

(2) Subsection (6) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Requirement that voter affix a postage stamp to a mail ballot in order to vote in a mail ballot election does not constitute an unconstitutional poll tax. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

City's failure to include the words "address correction requested" on the mail ballot packet did not constitute a lack of substantial compliance with this section. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

1-7.5-107.3. Verification of signatures - November coordinated elections. (1) (a) Except as provided in paragraph (b) of this subsection (1), in every mail ballot election that is a November coordinated election held in 2005 or any subsequent year, an election judge shall compare the signature on the self-affirmation on each return envelope with the signature of the eligible elector on file in the office of the county clerk and recorder in accordance with subsection (2) of this section.

(b) For the mail ballot election that is a November coordinated election held in 2003, the election judge shall compare in accordance with paragraph (a) of this subsection (1) only those signatures that are in the county clerk and recorder's database no later than 7 p.m. on election day.

(2) (a) If, upon comparing the signature of an eligible elector on the self-affirmation on the return envelope with the signature of the eligible elector on file with the county clerk and recorder, the election judge determines that the signatures do not match, two other election judges of different political party affiliations shall simultaneously compare the signatures. If both other election judges agree that the signatures do not match, the county clerk and recorder shall, within two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector returned a ballot to the county clerk and recorder. If the county clerk and recorder receives the form within eight days after election day confirming that the elector returned a ballot to the county clerk and recorder and enclosing a copy of the elector's identification as defined in section 1-1-104 (19.5), and if the ballot is otherwise valid, the ballot shall be counted. If the eligible elector returns the form indicating that the elector did not return a ballot to the county clerk and recorder, or if the eligible elector does not return the form within eight days after election day, the self-affirmation on the return envelope shall be categorized as incorrect, the ballot shall not be counted, and the county clerk and recorder shall send copies of the eligible elector's signature on the return envelope and the signature on file with the county clerk and recorder to the district attorney for investigation.

(b) An original return envelope with an enclosed secrecy envelope containing a voted ballot that is not counted in accordance with paragraph (a) of this subsection (2) shall be stored under seal in the office of the county clerk and recorder in a secure location separate from valid return envelopes and may be removed only under the authority of the district attorney or by order of a court having jurisdiction.

(c) In the case of a disagreement among the election judges as to whether the signature of an eligible elector on the self-affirmation on the return envelope matches the signature of the eligible elector on file with the county clerk and recorder pursuant to the procedures specified in paragraph (a) of this subsection (2), the mail ballot contained in the return envelope shall be counted in accordance with the requirements of sections 1-7.5-107 (6) and 1-7.5-107.5.

(3) If the election judge determines that the signature of an eligible elector on the self-affirmation matches the elector's signature on file with the county clerk and recorder, the election judge shall follow the procedures specified in section 1-7.5-107 (5) and (6) concerning the qualification and counting of mail ballots.

(4) (a) An election judge shall not determine that the signature of an eligible elector on the self-affirmation does not match the signature of that eligible elector on file with the county clerk and recorder solely on the basis of substitution of initials or use of a common nickname.

(b) The designated election official may provide training in the technique and standards of signature comparison to election judges who compare signatures pursuant to this section.

Source: L. 2003: Entire section added, p. 1280, § 7, effective April 22; entire section added, p. 1438, § 2, effective April 29. **L. 2004:** (2)(c) amended, p. 1186, § 3, effective August 4. **L. 2005:** (2)(a) amended, p. 1411, § 29, effective June 6; (2)(a) amended, p. 1446, § 29, effective June 6.

Editor's note: Amendments to this section by House Bill 03-1241 and Senate Bill 03-102 were harmonized.

1-7.5-107.5. Counting mail ballots. The election officials at the mail ballot counting place may receive and prepare mail ballots delivered and turned over to them by the designated election official for tabulation. Counting of the mail ballots may begin ten days prior to the election and continue until counting is completed. The election official in charge of the mail ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on election day.

Source: L. 99: Entire section added, p. 777, § 59, effective May 20.

1-7.5-108. Mail-in ballots. Provisions for the allowance of and procedures for mail-in ballots shall be determined by rules promulgated by the secretary of state.

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993. **L. 2007:** Entire section amended, p. 1779, § 18, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-108 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-109. Write-in candidates. Write-in candidates shall be allowed on mail ballot elections provided that the candidate has filed an affidavit of intent with the designated election official pursuant to section 1-4-1101. Ballots for write-in candidates are to be counted pursuant to section 1-7-114.

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993.

1-7.5-110. Challenges. Votes cast pursuant to this article may be challenged pursuant to and in accordance with law. Any mail ballot election held pursuant to this article shall not be invalidated on the grounds that an eligible elector did not receive a ballot so long as the designated election official for the political subdivision conducting the election acted in good faith in complying with the provisions of this article or with rules promulgated by the secretary of state.

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is the same as 1-7.5-109 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-111. Report to the general assembly. (Repealed)

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993. **L. 96:** Entire section repealed, p. 1269, § 192, effective August 7.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, is similar to 1-7.5-110 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

1-7.5-112. Repeal of article. (Repealed)

Source: L. 92: Entire article R&RE, p. 757, § 10, effective January 1, 1993. **L. 94:** Entire section repealed, p. 1167, § 42, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1992. This section, as it existed in 1992, was similar to 1-7.5-111 as said section existed in 1991, the year prior to the repeal and reenactment of this article.

ARTICLE 8

Mail-in and Early Voting

Editor's note: This article was numbered as article 13 of chapter 49 in C.R.S. 1963. The entire article was repealed and reenacted in 1980 and 1992 and subsequently amended with relocated provisions in 1996. Editor's notes following each section indicate the former section number if the section was relocated. For amendments prior to 1996, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1996; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment in 1980 and 1992 and that were subsequently amended with relocations in 1996 are shown in editor's notes following each section.

Cross references: For election offenses relating to absentee voting, see part 8 of article 13 of this title.

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PART 3

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PART 1

MAIL-IN VOTING

1-8-101. Ballots and supplies for mail-in voting. (1) Mail-in ballots, applications, affidavits, certificates, envelopes, instruction cards, and other necessary supplies shall be provided by the designated election official in the same manner as other election supplies are provided for in all elections and shall be furnished without cost to any eligible elector wishing to vote pursuant to this article. Mail-in ballots shall be ready for delivery or mailing to mail-in voters as soon as available.

(2) The ballots shall be in the same form as other official ballots for the same election. On the stub of the mail-in ballot shall be printed "Mail-in Ballot No. M. I. V.(number)", and such stubs shall be numbered consecutively, commencing with number 1.

(3) In counties including more than one state senatorial district or more than one state representative district, or both, mail-in ballots shall be provided in a manner to be determined by the county clerk and recorder for each combination of state legislative districts. Distinctive markings or colors may be used to identify political subdivisions when such colors or distinctive markings will aid in the distribution and tabulation of the ballots. A complete ballot may consist of one or more pages or cards so long as each page or card is numbered and identified as provided for paper ballots in sections 1-5-407 and 1-5-410. This subsection (3) shall apply to ballots to be cast on voting machines as well as to paper ballots and ballot cards that can be electronically counted.

(4) (a) On the mail-in ballot instruction card and the secrecy envelope or sleeve or on the combined instruction card and secrecy envelope or sleeve, whichever is applicable, shall be printed "All ballots, both polling place and mail-in, are counted in the same manner."

(b) The mail-in ballot instruction card shall contain information on how the elector may verify that his or her mail-in ballot has been received by the county clerk and recorder as provided in section 1-8-307.5.

Source: L. 96: Entire article amended with relocations, p. 1749, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1780, § 19, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-8-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-121 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For ballots for primary elections, and ballots for general and congressional vacancy elections, see §§ 1-5-402 and 1-5-403.

1-8-102. When mail-in voters may vote. Any eligible elector may vote by mail-in ballot at any election under the regulations and in the manner provided in this part 1.

Source: L. 96: Entire article amended with relocations, p. 1750, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1780, § 20, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-8-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For mailing other materials with absent voter's ballot, absent voter's applications and deliveries outside county clerk's office, breaking seal on absent voter's ballot, and offenses relating to absentee voting, see §§ 1-13-723 (2) and 1-13-801 to 1-13-803.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, §§330-336.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for absentee voting is constitutional. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

The provision for absentee voting was enacted for the purpose of procuring a fuller expression of the public will at the ballot box. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

1-8-103. Effect of "Uniformed and Overseas Citizens Absentee Voting Act" - emergency authority of secretary of state. (1) In the event of any conflict between this part 1 and any provisions of the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq., the provisions of the federal act shall control, and all designated election officials who are charged with the performance of duties under this code shall perform the duties and discharge the obligations placed upon them by the federal act.

(2) If a national or local emergency arises which makes substantial compliance with the provisions of this part 1 impossible or unreasonable, such as when congress has declared a national emergency or the president has ordered into active military service of the United States any units and members of the National Guard of this state, the secretary of state may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those members of the military or military support personnel directly affected by the emergency.

Source: L. 96: Entire article amended with relocations, p. 1750, § 46, effective July 1.

Editor's note: This section was formerly numbered as 1-8-102 (2) and (3).

1-8-103.3. Application for absentee ballots by persons residing overseas and military personnel. (1) An absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), may apply for an absentee ballot by the use of a properly executed federal postcard application prescribed in accordance with the federal "Uniformed and Overseas Citizens Absentee Voting Act", Pub.L. 99-410 or by a letter of application that meets the

requirements of section 1-8-104 (1). The elector may submit the application or letter to the county clerk and recorder by electronic means, as defined in section 1-8-103.5 (4).

(2) (a) Notwithstanding subsection (1) of this section and section 1-8-104 (2), a county clerk and recorder shall accept an unsigned federal postcard application or an unsigned letter of application for an absentee ballot that meets the requirements of section 1-8-104 (1) submitted on behalf of an absent uniformed services elector if the:

(I) Application is received from a commissioned officer in the unit to which the elector is assigned, attached, or under operational control or from an authorized voting assistance officer;

(II) Officer from whom the application is received is authorized to administer oaths; and

(III) Officer submits with the application a signed statement that the:

(A) Elector requested an absentee ballot either directly from the officer or through the elector's chain of command;

(B) Officer is a commissioned officer in the unit to which the elector is assigned, attached, or under operational control or is an authorized voting assistance officer;

(C) Elector is serving outside the United States, is entitled to additional payment for serving in a zone of hostile fire or imminent danger, and does not have access to facilities or equipment necessary to send the application due to military circumstances; and

(D) Elector provided to the officer, in writing, the information required to apply for an absentee ballot pursuant to section 1-8-104 (1).

(b) If the absent uniformed services elector wishes to register to vote using the federal postcard application, the officer shall state in the signed statement submitted by the officer pursuant to subparagraph (III) of paragraph (a) of this subsection (2) that an officer administered to the elector the affirmation required on the federal postcard application.

(c) A county clerk and recorder who accepts an unsigned federal postcard application pursuant to this subsection (2) shall cause the absentee ballot to be delivered to the elector at the address shown on the application.

(3) If an absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), submits a properly executed federal postcard application pursuant to subsection (1) of this section and the county clerk and recorder receiving the application determines that the applicant is otherwise eligible but not registered to vote, the county clerk and recorder shall register the applicant in accordance with section 1-2-208 and deliver an absentee ballot and other voting materials to the elector.

Source: L. 2007: Entire section added, p. 1042, § 3, effective August 3.

Editor's note: This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-8-103.5. Voting by persons residing overseas and military personnel - definitions. (1) The designated or coordinated election official of a county or other political subdivision that meets the requirements of the rules promulgated by the secretary of state pursuant to subsection (3) of this section shall provide a mail-in ballot by electronic means to an eligible elector who is an absent uniformed services elector, a nonresident overseas elector, or a resident overseas elector, as defined in section 1-2-208 (2.5), if the elector timely filed a mail-in ballot application with the designated or coordinated election official requesting that the mail-in ballot be sent by electronic means.

(1.5) Notwithstanding section 1-8-104 (3), a designated or coordinated election official shall not refuse to accept or process any otherwise valid mail-in ballot submitted by an absent uniformed services elector, as defined in section 1-2-208 (2.5), during a year on the grounds that the elector submitted the application before the first date on which the designated or coordinated election official otherwise accepts or processes such applications for that year.

(2) (a) The eligible elector may return the voted ballot to the designated or coordinated election official by electronic means. The returned ballot shall be counted if it arrives in the office of the designated or coordinated election official by 7 p.m. on election day. When the ballot is received by the designated or coordinated election official, a bipartisan team of judges shall duplicate the ballot, and the ballot shall be counted as all other mail-in ballots. The judges who duplicate the ballot shall not reveal to any other person how the elector has cast his or her ballot.

(b) The instructions for completing a mail-in ballot pursuant to this section shall inform the elector that a mail-in ballot returned by electronic means is not a confidential ballot.

(c) In handling a ballot returned pursuant to this section, all reasonable means shall be taken to ensure that only the judges who receive and duplicate the ballot are aware of information connecting the elector to the returned ballot.

(3) The secretary of state shall prescribe by rule the procedures or requirements necessary to implement the provisions of this section. The rules shall specify the procedures for sending and returning a ballot by electronic means. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(4) For purposes of this section, "electronic means" means facsimile transmission; except that the secretary of state may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish procedures by which a uniformed services elector serving outside the United States may receive and return a ballot by electronic mail in circumstances where another more secure voting method is not available or feasible.

Source: **L. 2002:** Entire section added, p. 242, § 1, effective July 1. **L. 2003:** (1) amended and (1.5) added, p. 1334, § 4, effective August 6. **L. 2006:** (1), (2), and (3) amended and (4) added, p. 580, § 1, effective August 7. **L. 2007:** (1), (1.5), (2)(a), and (2)(b) amended, p. 1780, § 21, effective June 1; (1) amended, p. 1043, § 4, effective August 3.

Editor's note: (1) Amendments to subsection (1) by Senate Bill 07-234 and House Bill 07-1149 were harmonized.

(2) Subsection (1) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

1-8-104. Applications for mail-in ballot. (1) (a) The application for a mail-in ballot shall be made in writing or by fax, using the application form furnished by the designated election official or in the form of a letter that includes the applicant's printed name, signature, residence address, mailing address if the applicant wishes to receive the mail-in ballot by mail, date of birth, and whether the applicant wishes to be designated as a permanent mail-in voter pursuant to section 1-8-104.5.

(b) If the application is made for a primary election ballot, the application shall name the political party with which the applicant is affiliated or wishes to affiliate.

(1.5) Repealed.

(2) The application for a mail-in ballot shall be personally signed by the applicant; or, in case of the applicant's inability to sign, the elector's mark shall be witnessed by another person.

(3) The application for a mail-in ballot shall be filed with the designated election official of the political subdivision in which the applicant resides or is entitled to vote. The application shall be filed no earlier than January 1 immediately preceding the election and no later than the close of business on the Friday immediately preceding the election; except that, if the applicant wishes to receive the mail-in ballot by mail, the application shall be filed no later than the close of business on the seventh day before the election.

(4) The application for a mail-in ballot is subject to the rules of residency contained in section 1-2-102 and is subject to challenge as provided in parts 1 and 2 of article 9 of this title.

(5) A prisoner in pretrial detention may apply for a mail-in ballot from the prisoner's county of residence. No application for a mail-in ballot shall be accepted unless personally signed by the applicant and accompanied by a certification from the institutional administrator or the administrator's designee

that the applicant is in pretrial detention. The institutional administrator shall certify the application immediately upon request by the prisoner.

(6) No person shall give to any eligible elector any form for the purpose of requesting a mail-in ballot unless such form prompts the applicant to provide all the information required by subsection (1) of this section and contains the following statement: "Under Colorado law, your mail-in ballot application must contain your printed name, signature, residence address, mailing address if you wish to receive the ballot by mail, and date of birth. If you do not provide all of this information, you may not receive a mail-in ballot according to the rules established by the secretary of state." Violation of this subsection (6) is an offense punishable as provided in section 1-13-803.

(7) Notwithstanding any other provision of this section, no mail-in ballot shall be mailed to an applicant unless the designated election official has previously received an application for a mail-in ballot from the applicant.

Source: **L. 96:** Entire article amended with relocations, p. 1751, § 46, effective July 1. **L. 2002:** (1) and (3) amended and (6) added, p. 1570, § 1, effective June 7; (2) amended, p. 1634, § 18, effective June 7. **L. 2003:** (7) added, p. 1038, § 2, effective August 6. **L. 2005:** (3) amended, p. 1411, § 30, effective June 6; (3) amended, p. 1446, § 30, effective June 6. **L. 2006:** (3) amended, p. 14, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1781, § 22, effective June 1.

Editor's note: (1) (a) This section was formerly numbered as 1-8-103.

(b) Prior to the relocation of 1-8-103, subsection (1.5)(b) provided for the repeal of subsection (1.5), effective January 1, 1999. (See L. 96, p. 1751.)

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, § 333.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Absentee voter statutes must be strictly construed, and a voter who wishes to cast such a ballot

must comply exactly with all applicable statutory requirements. *Jardon v. Meadowbrook-Fairview Metro. Dist.*, 190 Colo. 528, 549 P.2d 762 (1976).

Findings that voters came within the application requirements not disturbed on review. *Israel v. Wood*, 98 Colo. 495, 56 P.2d 1324 (1936).

1-8-104.5. Application for permanent mail-in voter status. (1) Any eligible elector may apply for permanent mail-in voter status. The application for permanent mail-in voter status shall be made in writing or by facsimile using an application form furnished by the designated election official or in the form of a letter. The application shall contain the same information submitted in connection with an application for a mail-in ballot pursuant to section 1-8-104.

(2) Upon receipt of an application for permanent mail-in voter status, the designated election official shall process the application in the same manner as an application for a mail-in ballot. If it is determined that the applicant is an eligible elector, the designated election official shall place the eligible elector's name upon the list maintained pursuant to section 1-8-108 of those eligible electors to whom a mail-in ballot is mailed each time there is a coordinated election.

Source: **L. 2007:** Entire section added, p. 1782, § 23, effective June 1.

1-8-105. Change of registration record. A change of name, residence, or affiliation request may be submitted to the county clerk and recorder at the same time the eligible elector submits an application for a mail-in ballot if the elector has moved within the county and states that the move occurred no later than thirty days before the election and that the elector has lived at the new residence for at least thirty days. The application shall include the elector's old and new addresses within the county, the elector's printed name and signature, and the date of the application. Upon receipt of the application, the county clerk and recorder shall verify the registration of the elector, amend the registration record, and mail to the elector an official mail-in ballot as provided in this part 1.

Source: L. 96: Entire article amended with relocations, p. 1751, § 46, effective July 1. **L. 99:** Entire section amended, p. 777, § 60, effective May 20; entire section amended, p. 162, § 18, effective August 4. **L. 2007:** Entire section amended, p.1782, § 24, effective June 1.

Editor's note: (1) This section was formerly numbered as 1-8-104.
(2) Amendments to this section by Senate Bill 99-025 and House Bill 99-1152 were harmonized.

1-8-106. Verification of registration of elector. Upon receipt of an application for a mail-in ballot within the proper time, the designated election official shall examine the records of eligible electors to ascertain whether or not the applicant is eligible to vote as requested. If the applicant is eligible, the designated election official, either personally in the office of the designated election official or by mail to the mailing address given in the application, shall deliver an official mail-in ballot, a return envelope with information as to precinct and residence address as shown by the records in the office, and an instruction card.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** Entire section amended, p. 186, § 7, effective August 6. **L. 2007:** Entire section amended, p. 1783, § 25, effective June 1.

Editor's note: This section was formerly numbered as 1-8-105.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339. **C.J.S.** See 29 C.J.S., Elections, §§ 330, 335.

1-8-107. Registration record. (1) Before any mail-in ballot is delivered or mailed or before any eligible elector is permitted to cast a vote at an election where the county clerk and recorder is the designated election official, the designated election official shall record the number of the ballot, together with the date the ballot is delivered or mailed. The supply judge for the mail-in voter's precinct shall receive the list of mail-in ballots prepared pursuant to section 1-8-108. Mail-in voters for each precinct shall be recorded on the precinct registration list for use at the polls as provided in section 1-5-302.

(2) For nonpartisan elections, mail-in voters shall be recorded on the precinct registration list for use at the polls as provided in section 1-5-303.

Source: L. 96: Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** (1) amended, p. 187, § 8, effective August 6. **L. 2007:** Entire section amended, p. 1783, § 26, effective June 1.

Editor's note: This section was formerly numbered as 1-8-106.

Cross references: For inspection of public records generally, see part 2 of article 72 of title 24.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 330, 335.

1-8-108. List of mail-in ballots. (1) The designated election official shall keep a list of names and precinct numbers of eligible electors applying for mail-in ballots and permanent mail-in voters placed on the list pursuant to section 1-8-104.5 (2), together with the date on which each application was made, the date on which the mail-in ballot was sent, and the date on which each mail-in ballot was returned. If a mail-in ballot is not returned or if it is rejected and not counted, that fact shall be noted on the list. The list is open to public inspection under proper regulations.

(2) (a) An eligible elector whose name appears on the list as a permanent mail-in voter shall remain on the list and shall be mailed a mail-in ballot for each coordinated election.

(b) An eligible elector shall be deleted from the permanent mail-in voter list if:

- (I) The eligible elector notifies the designated election official that he or she no longer wishes to vote by mail-in ballot;
- (II) The mail-in ballot sent to the eligible elector is returned to the designated election official as undeliverable; or
- (III) The eligible elector has been deemed "Inactive" pursuant to section 1-2-605.

Source: **L. 96:** Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** Entire section amended, p. 187, § 9, effective August 6. **L. 2007:** Entire section amended, p. 1783, § 27, effective June 1.

Editor's note: This section was formerly numbered as 1-8-107.

Cross references: For inspection of public records generally, see part 2 of article 72 of title 24.

1-8-109. Watchers at mail-in polling places. Any political party, candidate, or proponents or opponents of a ballot issue entitled to have watchers at polling places shall each have the right to maintain one watcher in the office of the designated election official and mail-in polling places during the period in which mail-in ballots may be applied for or received.

Source: **L. 96:** Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1784, § 28, effective June 1.

Editor's note: This section was formerly numbered as 1-8-108.

Cross references: For challenges of absentee ballots, see § 1-9-206.

1-8-110. Challenges. The right to vote of any person voting by mail-in ballot may be challenged in the same manner and for the same causes as other persons are challenged.

Source: **L. 96:** Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1784, § 29, effective June 1.

Editor's note: This section was formerly numbered as 1-8-109.

Cross references: For challenges of absentee ballots, see § 1-9-206.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 47, 330.

1-8-111. Delivery of mail-in ballot and replacement mail-in ballots. (1) The mail-in ballot and other materials shall be delivered or mailed to the elector within seventy-two hours after the receipt of the application, if the official ballots are then printed, or, if not then printed, within seventy-two hours after the printed ballots are delivered to the designated election official. If the mail-in ballot and other materials are mailed, the envelope shall be marked "DO NOT FORWARD" or by any other similar statement that is in accordance with United States postal service regulations.

(2) Upon a request by an eligible elector stating an emergency need, the designated election official may authorize one or more deputies or may deputize a courier service to deliver the mail-in ballot and return the ballot to the office of the designated election official.

(3) The designated election official may issue a replacement mail-in ballot if an eligible elector applied for a mail-in ballot but did not receive it or if the elector spoiled the mail-in ballot. An affidavit completed by either the elector or the designated election official shall give the reason for requesting a replacement mail-in ballot and shall state that the original mail-in ballot was not received or was spoiled, that the individual has not voted, and that the individual does not intend to vote at the election except by voting the replacement mail-in ballot. The mail-in record shall have the notation "Replacement Issued" entered to indicate the original mail-in ballot was not received or was spoiled, and the replacement mail-

in ballot number shall be entered in the mail-in record. The first ballot returned by the elector shall be considered the elector's official ballot.

Source: **L. 96:** Entire article amended with relocations, p. 1752, § 46, effective July 1. **L. 97:** (1) amended, p. 187, § 10, effective August 6. **L. 2005:** (3) amended, p. 1411, § 31, effective June 6; (3) amended, p. 1446, § 31, effective June 6. **L. 2007:** Entire section amended, p. 1784, § 30, effective June 1.

Editor's note: This section was formerly numbered as 1-8-110.

1-8-112. Voting at group facilities. (1) When more than five mail-in ballots are to be sent to the same group residential facility within a county, which includes, but is not limited to, nursing homes and senior citizen housing facilities, a committee consisting of one employee of the county clerk and recorder and, where available, a representative appointed by each of the major political parties shall deliver the mail-in ballots and return those ballots to the office of the county clerk and recorder.

(2) For nonpartisan elections, upon the request of an eligible elector, the designated election official may appoint a committee which consists of two or more election judges or employees or representatives of the designated election official.

Source: **L. 96:** Entire article amended with relocations, p. 1753, § 46, effective July 1. **L. 97:** (1) amended, p. 187, § 11, effective August 6. **L. 2007:** (1) amended, p. 1785, § 31, effective June 1.

Editor's note: This section was formerly numbered as 1-8-111.

1-8-113. Manner of mail-in voting - first-time voters casting a mail-in ballot after having registered by mail to vote. (1) (a) Any eligible elector applying for and receiving a mail-in ballot, in casting the ballot, shall make and subscribe to the self-affirmation on the return envelope. The elector shall then mark the ballot, fold the ballot or insert the ballot card in the special envelope provided for the purpose so as to conceal the marking, deposit it in the return envelope, enclose identification if required by subsection (3) of this section, and seal the envelope securely. The envelope may be delivered personally or mailed by the elector to the designated election official issuing the ballot or delivered personally by the elector during the time early voting is made available pursuant to section 1-8-202 or on election day to an early voters' polling place in the county in which the elector is registered to vote. Alternatively, an elector may deliver the ballot to any person of the elector's own choice or to any duly authorized agent of the designated election official for mailing or personal delivery to the designated election official; except that no one person other than a duly authorized agent of the designated election official may receive more than five mail-in ballots in any election for mailing or delivery to the designated election official. All envelopes containing mail-in ballots shall be in the hands of the designated election official no later than 7 p.m. on the day of the election. Mail-in envelopes received after 7 p.m. on the day of the election but postmarked on or before the day of the election will remain sealed and uncounted, but the elector's registration record will not be canceled for failure to vote in a general election.

(b) and (c) Repealed.

(d) If the return envelope received from an eligible elector described in subsection (3) of this section does not contain identification, the mail-in ballot shall be treated as a provisional ballot and shall be verified and counted in accordance with article 8.5 of this title.

(2) Upon receipt of a mail-in ballot from an eligible elector, the designated election official shall write or stamp upon the envelope containing the ballot the date the envelope was received in the office. The designated election official shall safely keep and preserve all mail-in ballots unopened in a ballot box or transfer case that is locked and secured with a numbered seal until the time prescribed for delivery to the supply judge in accordance with section 1-8-303.

(3) (a) Unless otherwise provided by section 1-2-501 (1.5), the requirements of this subsection (3) shall apply to a person who registered to vote by mail in accordance with part 5 of article 2 of this title and who:

(I) Has not previously voted in an election in Colorado; or

(II) Is reregistering to vote after moving from one county in this state to another and the election in which the person intends to vote takes place prior to the creation by the department of state of a computerized statewide voter registration list that satisfies the requirements of part 3 of article 2 of this title.

(b) Any person who matches either of the descriptions specified in subparagraph (I) or (II) of paragraph (a) of this subsection (3) and intends to cast his or her ballot by mail-in ballot in accordance with the requirements of this article shall submit with his or her mail-in ballot a copy of identification within the meaning of section 1-1-104 (19.5).

(c) The designated election official shall include with the mail-in ballot written instructions advising an elector who matches the description specified in paragraph (a) of this subsection (3) of the manner in which the elector shall be in compliance with the requirements contained in paragraph (a) of this subsection (3).

(d) Any person who desires to cast his or her ballot by mail-in ballot but does not satisfy the requirements of paragraph (b) of this subsection (3) may cast such ballot by mail, and the ballot shall be treated as a provisional ballot in accordance with the requirements of article 8.5 of this title.

(e) The requirements of this subsection (3) shall be implemented by state and local election officials in a uniform and nondiscriminatory manner.

(f) Notwithstanding any other provision of law, the requirements of this subsection (3) shall not apply to any person who is:

(I) Entitled to vote by absentee ballot under the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq.;

(II) Provided the right to vote otherwise than in person under section (b) (2) (B) (ii) of the federal "Voting Accessibility for the Elderly and Handicapped Act", 42 U.S.C. sec. 1973ee-1 et seq.; or

(III) Entitled to vote otherwise than in person under any other federal law.

Source: **L. 96:** Entire article amended with relocations, p. 1753, § 46, effective July 1. **L. 97:** (2) amended, p. 188, § 12, effective August 6. **L. 2002:** (1) amended, p. 1635, § 19, effective June 7. **L. 2003:** (1) amended, p. 1281, § 8, effective April 22; (3) added, p. 2079, § 16, effective May 22. **L. 2004:** (1)(a) and (1)(d) amended and (1)(b) and (1)(c) repealed, pp. 1053, 1054, §§ 7, 9, effective May 21. **L. 2005:** (1)(d) and (3)(d) amended, p. 1412, § 32, effective June 6; (1)(d) and (3)(d) amended, p. 1447, § 32, effective June 6. **L. 2006:** IP(3)(a) amended, p. 2033, § 14, effective June 6. **L. 2007:** (1)(a), (1)(d), (2), (3)(b), (3)(c), and (3)(d) amended, p. 1785, § 32, effective June 1.

Editor's note: This section was formerly numbered as 1-8-114 (1) and (2).

ANNOTATION

- I. General Consideration.
- II. Casting Absentee Ballots.
- III. Duty of Election Official.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, § 336.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. CASTING ABSENTEE BALLOTS.

A voter wishing to cast an absentee vote must comply with all the statutory demands, and the power of the board of elections is held within those lines. *Bullington v. Grabow*, 88 Colo. 561, 298 P. 1059 (1931).

Absentee voting is in derogation of the general election law and should be strictly construed. *Bullington v. Grabow*, 88 Colo. 561, 298 P. 1059 (1931).

For a strict construction of prescribed procedures is necessary to safeguard the exercise of the

elective franchise. *Bullington v. Grabow*, 88 Colo. 561, 298 P. 1059 (1931).

And the general assembly undoubtedly intended that a voter be held to a strict performance of the prescribed absentee voting procedures. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Thus, execution by a voter of the affidavit is a mandatory precedent to the right to so vote, and if not furnished, the ballot should not be counted. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

However, objection to method of casting vote not considered where vote not mentioned in statement of contest. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

Voter cannot be disenfranchised for clerk's mistake. A voter who has performed every act required of him cannot be disenfranchised because of irregularities or mistakes of the county clerk. Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888); Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907); Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Election officials are presumed to comply with the law. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

III. DUTY OF ELECTION OFFICIAL.

1-8-114. Self-affirmation on return envelope. (1) The return envelope for the mail-in ballot shall have printed on it a self-affirmation substantially in the following form:
"I state under penalty of perjury that I am an eligible elector; that I reside at the address indicated on my application for a mail-in ballot; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992".

.....
.....

Date
Signature of voter"

(2) The signing of the self-affirmation on the return envelope for the mail-in ballot shall constitute an affirmation by the voter, under penalty of perjury, that the facts stated in the self-affirmation are true.

(3) Assistance to mail-in voters may be given by any person selected by the mail-in voter. No person other than an elector authorized by the designated election official pursuant to sections 1-8-112 and 1-8-205 shall be permitted to assist more than one mail-in voter unless the person is at least eighteen years of age and is the spouse, parent, grandparent, sibling, or child of the mail-in voter seeking assistance. No elector who assists a mail-in voter shall attempt to persuade or unreasonably influence the voter to vote in a particular manner while the mail-in voter is voting.

Source: L. 96: Entire article amended with relocations, p. 1754, § 46, effective July 1. **L. 98:** (1) and (2) amended, p. 32, § 1, effective March 16. **L. 2007:** Entire section amended, p. 1786, § 33, effective June 1.

Editor's note: This section was formerly numbered as 1-8-115.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339. **C.J.S.** See 29 C.J.S., Elections, § 334.

1-8-114.5. Verification of signatures. (1) (a) Except as provided in paragraph (b) of this subsection (1), in every statewide primary and general election held in 2006 or any subsequent year, an election judge shall compare the signature on the self-affirmation on each return envelope of each mail-in ballot with the signature of the eligible elector on file in the office of the county clerk and recorder in accordance with subsection (2) of this section.

(b) For the statewide primary and general election held in 2004, the election judge shall compare in accordance with paragraph (a) of this subsection (1) only those signatures that are in the county clerk and recorder's database.

(2) (a) If, upon comparing the signature of an eligible elector on the self-affirmation on the return envelope with the signature of that eligible elector on file with the county clerk and recorder, the election judge determines that the signatures do not match, two other election judges of different political party affiliations shall simultaneously compare the signatures. If both other election judges agree that the signatures do not match, the county clerk and recorder shall, within two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector voted, signed the self-affirmation, and returned a ballot to the county clerk and recorder. If the county clerk and recorder receives the form within eight days after election day confirming that the elector voted, signed the self-affirmation, and returned a ballot to the county clerk and recorder and enclosing a copy of the elector's identification as defined in section 1-1-104 (19.5), and if the ballot is otherwise valid, the ballot shall be counted. If the eligible elector does not enclose a copy of the elector's identification as defined in section 1-1-104 (19.5) along with the form, the self-affirmation on the return envelope shall be categorized as incorrect and the ballot shall not be counted. If the eligible elector returns the form indicating that the elector did not vote, sign the self-affirmation, or return a ballot to the county clerk and recorder, or if the eligible elector does not return the form within eight days after election day, the self-affirmation on the return envelope shall be categorized as incorrect, the ballot shall not be counted, and the county clerk and recorder shall send copies of the eligible elector's signature on the return envelope and the signature on file with the county clerk and recorder to the district attorney for investigation.

(b) An original return envelope with an enclosed secrecy envelope containing a voted ballot that is not counted in accordance with paragraph (a) of this subsection (2) shall be stored under seal in the office of the county clerk and recorder in a secure location separate from valid return envelopes and may be removed only under the authority of the district attorney or by order of a court having jurisdiction.

(c) In the case of a disagreement among the election judges as to whether the signature of an eligible elector on the self-affirmation on the return envelope matches the signature of the eligible elector on file with the county clerk and recorder pursuant to the procedures specified in paragraph (a) of this subsection (2), the mail-in ballot contained in the return envelope shall be counted in accordance with the requirements of part 3 of this article.

(3) If the election judge determines that the signature of an eligible elector on the self-affirmation matches the elector's signature on file with the county clerk and recorder, the election judge shall follow the procedures specified in part 3 of this article pertaining to the counting of mail-in ballots.

(4) (a) An election judge shall not determine that the signature of an eligible elector on the self-affirmation does not match the signature of that eligible elector on file with the county clerk and recorder solely on the basis of substitution of initials or use of a common nickname.

(b) The designated election official may provide training in the technique and standards of signature comparison to election judges who compare signatures pursuant to this section.

Source: L. 2003: Entire section added, p. 1439, § 3, effective April 29. L. 2004: (2)(c) amended, p. 1187, § 4, effective August 4. L. 2005: (2)(a) amended, p. 1412, § 33, effective June 6; (2)(a) amended, p. 1447, § 33, effective June 6. L. 2006: (2)(a) amended, p. 14, § 2, effective July 1. L. 2007: (1)(a), (2)(c), and (3) amended, p. 1786, § 34, effective June 1.

1-8-115. Emergency mail-in voting. (1) (a) In the event an eligible elector or a member of an eligible elector's immediate family, related by blood or marriage to the second degree, is confined in a hospital or place of residence on election day and the confinement occurred because of conditions arising after the last day to apply for a mail-in ballot, the elector may request in a personally signed written statement that the designated election official send a mail-in ballot with the word "EMERGENCY" stamped on the stubs. The designated election official shall deliver the emergency mail-in ballot, at the official's office during the regular hours of business, to any authorized representative of the elector. For the purposes of this paragraph (a), "authorized representative" means a person who possesses a written statement from the elector containing the elector's signature, name, and address and indicating that the elector is or will be confined in a hospital or place of residence on election day and requesting that the

emergency absentee ballot be given to the authorized person as identified by name and address. The authorized person shall acknowledge receipt of the emergency mail-in ballot with a signature, name, and address.

(b) A request for an emergency mail-in ballot under this section shall be made before 5 p.m. on the day of the election, and the ballot shall be returned no later than 7 p.m. on the day of the election.

(c) If the eligible elector is unable to have an authorized representative pick up the ballot at the office of the designated election official and deliver it to the eligible elector, the designated election official shall deliver a mail-in ballot to the eligible elector by electronic transfer in accordance with the rules of the secretary of state. If the mail-in ballot is delivered to the eligible elector by electronic transfer, the eligible elector may return the ballot by electronic transfer as set forth in subsection (5) of this section.

(2) Any eligible elector, including any election official, who is unable to go to the polls because of conditions arising after the closing date for mail-in ballot applications that will result in the elector's absence from the precinct on election day may apply at the office of the designated election official for an emergency mail-in ballot. Upon receipt of an affidavit signed by the elector on a form provided by the designated election official attesting to the fact that the elector will be absent from the precinct on election day because of conditions arising after the last day to apply for a mail-in ballot, the designated election official shall provide the elector with a mail-in ballot with the word "EMERGENCY" stamped on the stubs. The request for the ballot shall be made, and the ballot shall be voted at the designated election official's office or outside of the office and returned, by 7 p.m. on the day of the election.

(3) Except as otherwise provided in subsection (5) of this section, after marking the ballot, the eligible elector shall place it in a return envelope provided by the designated election official. The elector shall then fill out and sign the self-affirmation on the envelope, as provided in section 1-8-114, on or before election day and return it to the office of the designated election official. Upon receipt of the envelope, the designated election official shall verify the elector's name on the return envelope and shall deposit the envelope in the office in a ballot box that is locked and secured with a numbered seal.

(4) If, following the procedure set forth in this section, the designated election official is unable to provide a mail-in ballot to an elector, the designated election official shall seek authority from the secretary of state to provide a mail-in ballot to the elector by electronic transfer in accordance with the election rules of the secretary of state. If the mail-in ballot is delivered to the eligible elector by electronic transfer, the eligible elector may return the ballot by electronic transfer as set forth in subsection (5) of this section.

(5) (a) If a mail-in ballot is delivered to an eligible elector by electronic transfer pursuant to paragraph (c) of subsection (1) of this section or subsection (4) of this section, the eligible elector may return the voted ballot to the designated election official by electronic transfer. In order to be counted, the returned ballot shall be received in the office of the designated election official by 7 p.m. on election day. Once the ballot is received by the designated election official, a bipartisan team of judges shall duplicate the ballot, and the ballot shall be counted as all other mail-in ballots. Duplicating judges shall not reveal how the elector has cast his or her ballot.

(b) Any elector who receives a mail-in ballot by electronic transfer pursuant to paragraph (c) of subsection (1) of this section or subsection (4) of this section shall be informed in the instructions for completing the ballot that, if the ballot is returned by electronic transfer, the ballot will not be a confidential ballot.

(c) In handling a returned ballot pursuant to this subsection (5), all reasonable means shall be taken to ensure that only the receiving judge is aware of information connecting the elector to the returned ballot.

(d) The secretary of state may prescribe by rule any procedures or requirements as may be necessary to implement the provisions of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 96: Entire article amended with relocations, p. 1754, § 46, effective July 1. **L. 97:** (2) and (3) amended, p. 188, § 13, effective August 6. **L. 2005:** (1)(a) amended and (1)(c) and (4) added, pp. 1412, 1413, §§ 34, 35, effective June 6; (1)(a) amended and (1)(c) and (4) added, p. 1448, §§ 34, 35, effective June 6. **L. 2006:** (1)(c), (3), and (4) amended and (5) added, p. 15, § 3, effective July 1. **L. 2007:** (1), (2), (4), (5)(a), and (5)(b) amended, p. 1787, § 35, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-8-118 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-123 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-118.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

C.J.S. See 29 C.J.S., Elections, §§ 332, 333.

1-8-116. Special write-in blank mail-in ballots. (1) A citizen who resides or is traveling outside the United States, who is a registered elector in this state prior to his or her departure, and who qualifies pursuant to this section may apply to the county clerk and recorder for a special write-in blank mail-in ballot to vote at a primary, general, coordinated, or congressional vacancy election, regardless of whether the elector has previously submitted an absentee ballot application for the election. An application for a special write-in blank mail-in voter ballot shall contain a statement by the registered elector that due to military or other contingencies that preclude normal mail delivery, as specified by the elector, the elector believes that he or she cannot vote a mail-in ballot during the normal period provided by this part 1. An application made pursuant to this section that is received by the designated election official prior to the fifty-seventh day before the election shall be kept and processed on or after the fifty-seventh day before the election.

(2) If the applicant is qualified, the designated election official shall immediately send the elector a ballot and a list of all candidates who have qualified for the ballot by the fifty-seventh day before the election and a list of all measures that are to be submitted to the voters and upon which the elector is qualified to vote.

(3) On the special write-in blank mail-in ballot, the registered elector may designate his or her candidate by writing in the name of the candidate or by writing in the name of a political party or political organization, in which case the ballot shall be counted for the candidate of that political party or political organization. Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate, political party, or political organization shall be disregarded in determining the validity of the ballot as long as the intention of the registered elector can be ascertained.

(4) (a) If both a federal write-in blank absentee ballot pursuant to section 1-8-117 and a special write-in blank mail-in ballot pursuant to this section are returned by the voter, the federal write-in absentee ballot shall be deemed void, and votes shall be counted from the special write-in blank mail-in ballot only.

(b) If both a mail-in ballot and a special write-in blank mail-in ballot are returned, the special write-in blank mail-in ballot shall be deemed void, and votes shall be counted from the mail-in ballot only.

(5) Special write-in blank mail-in ballots shall be counted in accordance with section 1-8-302.

Source: L. 96: Entire article amended with relocations, p. 1755, § 46, effective July 1. **L. 2005:** (1) and (2) amended, p. 1413, § 36, effective June 6; (1) and (2) amended, p. 1448, § 36, effective June 6. **L. 2007:** (1), (3), (4), and (5) amended, p. 1788, § 36, effective June 1.

Editor's note: This section was formerly numbered as 1-8-118.5.

1-8-117. Federal write-in absentee ballots pursuant to the "Uniformed and Overseas Citizens Absentee Voting Act". (1) An absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), who is an eligible elector in this state prior to the elector's departure or pursuant to section 1-2-208 is entitled to vote for federal officers by a federal write-in absentee ballot at any primary, general, or congressional vacancy election.

(2) and (3) (Deleted by amendment, L. 2007, p. 1043, § 5, effective August 3, 2007.)

(4) (a) In accordance with the "Uniformed and Overseas Citizens Absentee Voting Act", Pub.L. 99-410, an absent uniformed services elector, nonresident overseas elector, or resident overseas elector, as defined in section 1-2-208 (2.5), may vote by federal write-in absentee ballot if the elector made a timely application for a state mail-in ballot but believes that he or she will be unable to vote and return the ballot by normal mail delivery within the time provided for the Colorado mail-in ballot.

(b) The eligible elector may designate the federal candidate by writing in the name of the candidate or by writing in the name of a political party or political organization, in which case the ballot shall be counted for the candidate of that political party or political organization. Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate, political party, or political organization shall be disregarded in determining the validity of the ballot as long as the intention of the elector can be ascertained.

(5) (Deleted by amendment, L. 2007, p. 1043, § 5, effective August 3, 2007.)

(6) Except as otherwise provided by subsection (7) of this section, a federal write-in absentee ballot shall be counted in accordance with part 3 of this article.

(7) A federal write-in absentee ballot shall not be counted if:

(a) The ballot was submitted by a nonresident overseas elector or a resident overseas elector from a location in the United States;

(b) The ballot was submitted by an elector whose application for a state absentee ballot was received after the close of business on the Friday immediately preceding the election; or

(c) The designated election official received a state absentee ballot from the elector by 7 p.m. on the day of the election.

Source: L. 96: Entire article amended with relocations, p. 1756, § 46, effective July 1. L. 2003: (2) and (3) amended, p. 1335, § 5, effective August 6. L. 2005: (1), (2), and (3) amended, p. 1414, § 37, effective June 6; (1), (2), and (3) amended, p. 1449, § 37, effective June 6. L. 2007: (3), (4)(a), and (5) amended, p. 1789, § 37, effective June 1; (2), (3), (4)(a), (5), and (6) amended and (7) added, p. 1043, § 5, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-8-118.5 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-119.

(3) Amendments to subsection (4)(a) by Senate Bill 07-234 and House Bill 07-1149 were harmonized.

(4) Subsections (3) and (5) were amended by Senate Bill 07-234. Those amendments were superseded by the amendments to subsections (3) and (5) in House Bill 07-1149.

(5) Subsections (2), (3), (4)(a), (5), (6), and (7) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the "Uniformed and Overseas Citizens Absentee Voting Act", see 42 U.S.C. sec. 1973ff et seq.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 331-339.

1-8-118. Opt-out from mail-in ballot requirements. (1) In the case of any general election in which registered electors who live in specified precincts in a particular county are required to cast their ballots by mail in the form of mail-in ballots in accordance with the requirements of this part 1, the clerk and recorder of the county shall notify such electors that they may opt-out from casting their ballots in such manner. In such cases, the clerk and recorder shall further direct such electors to cast their ballots by any of the following means:

- (a) Early voting prior to election day in accordance with the requirements of part 2 of this article;
- (b) At the office of the clerk and recorder on election day; or
- (c) At such other locations as the clerk and recorder may designate.

Source: **L. 2003:** Entire section added, p. 1038, § 1, effective August 6. **L. 2007:** IP(1) amended, p. 1789 § 38, effective June 1.

Editor's note: This section was originally numbered as 1-8-121 in House Bill 03-1153, but has been renumbered on revision for ease of location.

PART 2

EARLY VOTING

1-8-201. Ballots and supplies for early voting. (1) Early voters' ballots, applications, affidavits, certificates, instruction cards, and other necessary supplies shall be provided by the designated election official in the same manner as other election supplies are provided for in all elections and shall be furnished without cost to any eligible elector wishing to vote pursuant to this part 2. Early voters' ballots shall be ready for delivery to electors on the first day for early voting.

- (2) The ballots shall be in the same form as other official ballots for the same election.

Source: **L. 96:** Entire article amended with relocations, p. 1757, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-303 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-8-202. When eligible electors may vote by early ballot. Early voting shall be made available to any eligible elector in the manner provided in this part 2 during regular business hours for ten days before a primary election and a special legislative election and for fifteen days before a general election or other November election conducted by the county clerk and recorder. The board of county commissioners may by resolution increase the hours that the early voters' polling place may be open. Eligible electors who appear in person at the early voters' polling place during this time may cast their ballots in the same manner as any ballot would be cast in a precinct polling place on election day.

Source: **L. 96:** Entire article amended with relocations, p. 1757, § 46, effective July 1. **L. 97:** Entire section amended, p. 188, § 14, effective August 6. **L. 99:** Entire section amended, p. 943, § 4, effective May 28; entire section amended, p. 1390, § 10, effective June 4. **L. 2003:** Entire section amended, p. 495, § 3, effective March 5.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-304 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

- (2) Amendments to this section by Senate Bill 99-001 and House Bill 99-1097 were harmonized.

Cross references: For delivery of absentee voter's ballot, see § 1-8-111.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 299-304, 331-339.

1-8-203. Effect of "Uniformed and Overseas Citizens Absentee Voting Act" - emergency authority of secretary of state. (1) In the event of any conflict between this part 2 and any provisions of the federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff et seq., the provisions of the federal act shall control, and all designated election officials who are charged with the performance of duties under this code shall perform the duties and discharge the obligations placed upon them by the federal act.

(2) If a national or local emergency arises which makes substantial compliance with the provisions of this part 2 impossible or unreasonable, such as when congress has declared a national emergency or the president has ordered into active military service of the United States any units and members of the National Guard of this state, the secretary of state may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate early voting by those members of the military or military support personnel directly affected by the emergency.

Source: L. 96: Entire article amended with relocations, p. 1757, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-305 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-8-204. Early voters' polling place. Each county clerk and recorder shall provide one or more early voters' polling places, each of which shall be accessible to persons with disabilities and which shall be provided with on-line computer accessibility to the county clerk and recorder, suitable quarters, ballot boxes or voting equipment, and other necessary supplies as provided by law in the case of precinct polling places. In the event the county clerk and recorder determines that the number of early voters' polling places is insufficient due to the number of eligible electors who are voting by early ballot, the county clerk and recorder may establish additional early voters' polling places for the convenience of eligible electors wishing to vote at such polling places. The county clerk and recorder shall give adequate notice to eligible electors of such additional early voters' polling places.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1. **L. 97:** Entire section amended, p. 189, § 15, effective August 6. **L. 2004:** Entire section amended, p. 1359, § 24, effective May 28.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-306 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-112.

Cross references: (1) For establishment of precinct polling places, see §§ 1-5-101 and 1-5-102.

(2) For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-8-205. Procedures and personnel for early voters' polling place. (1) (a) Except as provided in paragraph (b) of this subsection (1), the early voters' polling place shall be open during the time for early voting as provided in section 1-8-202.

(b) Each county clerk and recorder shall provide one or more early voters' polling places during the hours of voting on election day for the purpose of receiving mail-in ballots that are personally delivered by an elector pursuant to section 1-8-113.

(2) For partisan elections, the county clerk and recorder shall appoint at least three receiving judges who meet the affiliation requirements contained in section 1-6-109. Regular employees of the county clerk and recorder may serve as receiving judges as long as they meet the party affiliation requirements of section 1-6-109.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1. L. 99: (2) amended, p. 162, § 19, effective August 4. L. 2007: (1) amended, p. 1789, § 39, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-307 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-113.

1-8-206. Watchers at early voters' polling places. Any political party, candidate, or proponents or opponents of a ballot issue entitled to have watchers at polling places shall each have the right to maintain one watcher at the early voters' polling place during the casting and counting of early voters' ballots.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-206 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-308 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-8-207. Challenges. The right to vote of any person voting by early voters' ballot may be challenged in the same manner and for the same causes as other persons are challenged.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 2001, are similar to those contained in 1-8-116 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For provisions for mail-in voters, see § 1-8-111 and part 2 of article 9 of this title.

1-8-208. Manner of early voting. (1) An eligible elector who receives an early voters' ballot may cast the ballot in the early voters' polling place, as provided in this part 2. Ballot boxes for early voting shall be locked and sealed each night with a numbered seal under the supervision of the election judges or watchers, and the keys shall remain in the possession of the designated election official until transferred to the supply judge for the mail-in and early voters' counting place for preparation for counting and tabulating pursuant to section 1-8-303. When a seal is broken, the designated election official and a person who shall not be of the same political party as the designated election official shall record the number of the seal and maintain the seal along with an explanation of the reasons for breaking the seal.

(2) Repealed.

(3) Early voting shall not be permitted after the close of the business day on the Friday immediately preceding the election.

Source: L. 96: Entire article amended with relocations, p. 1758, § 46, effective July 1. L. 97: (2)(a) amended, p. 477, § 20, effective July 1. L. 2007: (1) amended, p. 1790, § 40, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-2-310 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) (a) This section was formerly numbered as 1-8-114 (3), (3.5), and (4).

(b) Subsection (2)(b) provided for the repeal of subsection (2), effective January 1, 1999. (See L. 96, p. 1758.)

1-8-209. Casting early voters' ballot. (1) Except as provided in subsection (2) of this section, the voting machines, electronic voting machines, or ballot boxes used for the casting of early ballots shall remain locked and secured with a numbered seal, and the tabulation of the votes cast shall remain unknown until the time prescribed in section 1-8-302 for counting mail-in and early voters' ballots. Alternatively, for any electronic voting equipment, the ballot boxes shall be opened each night, and the voted ballots shall be placed in a transfer case that is locked and secured with a numbered seal. A record shall be maintained consisting of the date, number of ballots, and seal number of each ballot box and transfer case until each ballot box and transfer case is transferred to the supply judge for the absent voters' polling place for preparation for counting and tabulating pursuant to section 1-8-303. When a seal is broken, the designated election official and a person who shall not be of the same political party as the designated election official shall record the number of the seal and maintain the seal along with an explanation of the reasons for breaking the seal. During the time the early voters' polling place is not open, the designated election official shall have the custody and keys of any voting machine or electronic voting equipment being used for the casting of early ballots, except for those direct record early voting electronic voting machines being reused at the polling place on election day as provided in subsection (2) of this section. The voting machines or electronic voting machines used for the casting of early ballots shall not be used for the further counting of mail-in ballots, as provided in sections 1-8-305 and 1-8-306.

(2) (a) Direct record electronic voting machines utilized for casting of early ballots may be reused for the casting of votes at the polling place on election day. The designated election official shall place in a locked and secured location all direct record electronic voting machine cartridges that record early votes cast on such voting machines that are to be reused at the polling place on election day. The tabulation of early votes cast and recorded on such cartridges shall remain unknown until the time prescribed in section 1-8-302 for counting mail-in and early voters' ballots.

(b) Before any direct record electronic voting machine may be reused for the casting of votes at the polling place on election day, the designated election official shall store or record all early votes previously tabulated and recorded from such voting machine on an external device such as a diskette, tape, or compact disc.

Source: L. 96: Entire article amended with relocations, p. 1759, § 46, effective July 1. L. 2000: Entire section amended, p. 1726, § 1, effective July 1. L. 2007: (1) and (2)(a) amended, p. 1790, § 41, effective June 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-110 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) This section was formerly numbered as 1-8-116.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298-309. **C.J.S.** See 29 C.J.S., Elections, § 336.

PART 3

COUNTING MAIL-IN AND EARLY VOTERS' BALLOTS

1-8-301. Appointment of election judges for counting mail-in and early ballots. (1) If, in any political subdivision, the designated election official has mailed or delivered mail-in ballots to five hundred or more electors, the designated election official shall appoint, in addition to the receiving judges appointed as provided in section 1-8-205, at least three counting judges, not more than two of whom shall be from any one political party and whose powers and duties shall be the same as provided in

section 1-7-305 for counting judges in precinct polling places. For each additional five hundred mail-in ballots so mailed or delivered, the designated election official may appoint additional counting judges as needed.

(2) In all political subdivisions in which electronic or electromechanical voting systems are used, the designated election official, for each five hundred mail-in ballots mailed or delivered, may appoint, in addition to the receiving judges appointed as provided in section 1-8-205, five counting judges, not more than three of whom shall be from any one political party in a partisan election.

(3) In political subdivisions to which this section applies, the designated election official shall make the appointments so that one major political party is represented by a majority of election judges on the mail-in receiving board and the other major political party is represented by a majority of election judges on the mail-in counting board of the county. The designated election official shall appoint those electors certified by the county party chairpersons of the major political parties to the designated election official as mail-in receiving judges and mail-in counting judges. If an elector certified by a major political party is not willing or able to serve, then the major political party that certified the elector may certify a replacement judge to the designated election official. If the major political parties do not certify a sufficient number of mail-in receiving and counting judges to the designated election official, the designated election official may appoint a sufficient number of qualified electors to serve as mail-in receiving and counting judges.

(4) In all political subdivisions to which this section applies, where the designated election official has appointed one or more student election judges pursuant to article 6 of this title, the student election judge shall be appointed to serve as a judge for the purpose of counting mail-in and early ballots pursuant to this section; except that the student election judge need not satisfy any party affiliation required of election judges by this section.

Source: L. 96: Entire article amended with relocations, p. 1760, § 46, effective July 1. L. 2000: (4) added, p. 1336, § 5, effective July 1. L. 2001: (3) amended, p. 1004, § 13, effective August 8. L. 2004: (2) amended, p. 1360, § 25, effective May 28. L. 2007: Entire section amended, p. 1791, § 42, effective June 1.

Editor's note: This section was formerly numbered as 1-8-120.

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-8-302. Hours mail-in and early voters' counting place open for receiving and counting ballots.

(1) (Deleted by amendment, L. 99, p. 777, § 61, effective May 20, 1999.)

(2) The election officials at the mail-in and early voters' counting place may receive, cast, and prepare for tabulation mail-in and early voters' ballots delivered and turned over to them by the designated election official. Counting of the mail-in and early voters' ballots may begin ten days prior to the election and continue until counting is completed. The election officials in charge of the mail-in ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on election day.

Source: L. 96: Entire article amended with relocations, p. 1760, § 46, effective July 1. L. 99: Entire section amended, p. 777, § 61, effective May 20. L. 2007: (2) amended, p. 1791, § 43, effective June 1.

Editor's note: This section was formerly numbered as 1-8-117.

Cross references: For hours of voting generally, see § 1-7-101.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298-304, 331-339.

1-8-303. Delivery of mail-in and early voters' ballots to supply judge. At any time during the ten days prior to and including the election day, the designated election official shall deliver to the judges of the mail-in and early voters' ballot counting place all the mail-in envelopes received up to that time in packages or in ballot boxes that are locked and secured with a numbered seal together with the signed applications for the mail-in ballots, the count and the list of mail-in and early electors, and the record of mail-in ballots as provided for in section 1-8-108 for which a receipt will be given. The designated election official shall continue to deliver any envelopes containing mail-in ballots that may be received thereafter up to and including 7 p.m. on election day. On the sealed packages and boxes of mail-in envelopes shall be printed or written "This package (or box) contains (number) mail-in envelopes." With the envelopes, the designated election official shall deliver to the supply judge written instructions, which shall be followed by the election judges in casting and counting the ballots, and all the lists, records, and supplies needed for tabulating, recording, and certifying the mail-in and early voters' ballots.

Source: L. 96: Entire article amended with relocations, p. 1761, § 46, effective July 1. **L. 99:** Entire section amended, p. 778, § 62, effective May 20. **L. 2007:** Entire section amended, p. 1792, § 44, effective June 1.

Editor's note: This section was formerly numbered as 1-8-121.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 298-304, 331-339.

1-8-304. Preparing to count mail-in ballots - rejections. (1) (a) Before opening any mail-in ballot, one of the receiving judges, in the presence of a majority of the receiving judges, shall inspect the self-affirmation on the return envelope and, in an election coordinated by the county clerk and recorder, compare the signature on the self-affirmation with the signature of the eligible elector on file in the county clerk and recorder's office.

(b) The self-affirmation is valid if:

(I) The self-affirmation was completed by the elector or a person acting in the elector's behalf;

(II) The self-affirmation was signed by the elector or, if the elector is unable to sign, marked by the elector with or without assistance and witnessed by another person; and

(III) In an election coordinated by the county clerk and recorder, the signature on the self-affirmation matches the signature on file in the county clerk and recorder's office, or the eligible elector's marks on the application and the self-affirmation were witnessed by other persons.

(c) If the self-affirmation is valid, the receiving judge shall tear open the envelope without defacing the self-affirmation or mutilating the enclosed ballot. One of the election judges shall enter or verify the name of the mail-in voter in the pollbook, and another election judge shall deposit the ballot in the ballot box.

(d) For purposes of subparagraph (III) of paragraph (b) of this subsection (1), the signatures on an eligible elector's self-affirmation and on file in the county clerk and recorder's office shall be compared in the same manner as signatures on mail ballots are compared pursuant to article 7.5 of this title.

(2) If the self-affirmation on the return envelope is invalid, the election judges shall mark the envelope "rejected" and shall write on the envelope the reason for the rejection. The envelope shall be set aside without being opened, and the ballot shall not be counted.

(3) If it appears to the election judges, by sufficient proof, that a mail-in ballot sent to an elector who died after requesting the ballot contains a forged affidavit, the envelope containing the ballot of the

deceased mail-in voter shall not be opened, and the election judges shall make notation of the death and fraudulent signature on the back of the envelope. The ballot shall be forwarded to the district attorney for investigation of a violation of section 1-13-106. If a mail-in envelope contains more than one marked ballot of any one kind, none of the ballots shall be counted, and the election judges shall write the reason for rejection on the back of the ballots.

(4) Repealed.

Source: **L. 96:** Entire article amended with relocations, p. 1761, § 46, effective July 1. **L. 97:** (1) amended, p. 189, § 16, effective August 6. **L. 2002:** (1) and (2) amended, p. 1635, § 20, effective June 7. **L. 2005:** (3) amended, p. 1414, § 38, effective June 6; (3) amended, p. 1449, § 38, effective June 6. **L. 2006:** (4) repealed, p. 2036, § 26, effective June 6. **L. 2007:** (1)(a), (1)(c), and (3) amended, p. 1792, § 45, effective June 1.

Editor's note: This section was formerly numbered as 1-8-122.

1-8-305. Counting mail-in and early voters' ballots - partisan elections. (1) Mail-in and early voters' ballots shall be counted after delivery of the ballots as provided in section 1-8-303 and after preparation of the ballots as provided in section 1-8-304.

(2) Mail-in and early voters' ballots shall be counted in one of the following ways:

(a) In counties that use paper ballots, the mail-in and early voters' ballots may be counted in the manner provided in section 1-7-307 for counting paper ballots.

(b) (Deleted by amendment, L. 2004, p. 1360, § 26, effective May 28, 2004.)

(c) Any county may use electronic vote-tabulating equipment for the counting of mail-in ballots in the same manner provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(d) Early voters' ballots that are cast directly on electronic or electromechanical vote-tabulating equipment shall be counted in the same manner as provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(3) Votes for or against any ballot issue or measure shall be cast in the same manner as provided in section 1-8-206.

Source: **L. 96:** Entire article amended with relocations, p. 1762, § 46, effective July 1. **L. 2004:** (2)(b) and (2)(d) amended, p. 1360, § 26, effective May 28. **L. 2007:** (1), (2)(a), and (2)(c) amended, p. 1792, § 46, effective June 1.

Editor's note: This section was formerly numbered as 1-8-123.

Cross references: For the legislative declaration contained in the 2004 act amending subsections (2)(b) and (2)(d), see section 1 of chapter 334, Session Laws of Colorado 2004.

1-8-306. Counting mail-in and early voters' ballots - nonpartisan elections. (1) After delivery of the ballots as provided in section 1-8-303 and after preparation of the ballots as provided in section 1-8-304, the mail-in and early voters' ballots shall be counted in one of the following ways:

(a) In political subdivisions that use paper ballots, the mail-in and early voters' ballots may be counted in the manner provided in section 1-7-307 for counting paper ballots.

(b) Repealed.

(c) Any political subdivision may use electronic vote-tabulating equipment for the counting of mail-in ballots in the same manner provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(d) Early voters' ballots which are cast directly on voting machines or on electronic vote-tabulating equipment shall be counted in the same manner as provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(2) Votes for or against any measure appearing on the ballot shall be cast in the same manner as provided in section 1-8-206.

Source: L. 96: Entire article amended with relocations, p. 1762, § 46, effective July 1. L. 2002: (1)(b) repealed, p. 1642, § 39, effective June 7. L. 2007: IP(1), (1)(a), and (1)(c) amended, p. 1793, § 47, effective June 1.

Editor's note: This section was formerly numbered as 1-8-124.

1-8-307. Casting and counting - electronic system. In political subdivisions using a ballot card electronic voting system, mail-in and early voters' ballots may be cast on paper ballots and counted as provided in section 1-7-307 or may be cast on ballot cards and counted by electronic voting equipment as provided in part 6 of article 5 and parts 4 and 5 of article 7 of this title, or both methods may be used.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. L. 2007: Entire section amended, p. 1793, § 48, effective June 1.

Editor's note: This section was formerly numbered as 1-8-125.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 336-338.

1-8-307.5. Voter verification - mail-in ballot information. Each county clerk and recorder shall maintain the capability for providing electors, upon request, with information on whether the mail-in ballot cast by the elector was received by the clerk, including, but not limited to, an on-line mail-in ballot tracking system or response by other electronic or telephonic means.

Source: L. 2007: Entire section added, p. 1793, § 49, effective June 1.

1-8-308. Certificate of mail-in and early voters' ballots cast - survey of returns. (1) Upon the completion of the count of mail-in and early voters' ballots, the election judges shall make the certificate and perform all the official acts required by sections 1-7-601 and 1-7-602.

(2) Upon the survey of the returns of the political subdivision by the board of canvassers formed pursuant to section 1-10-101 or 1-10-201, the board shall include in its abstract of votes the votes cast in the early voters' polling place and counted at the mail-in and early voters' counting place in the manner provided for abstracting votes cast and counted at precinct polling places, as provided in article 10 of this title.

(3) (a) Beginning with the 2008 general election, and for all elections thereafter, the returns certified by the judges and the abstract of votes cast certified by the canvass board shall indicate the number of votes cast by early voters' or mail-in ballot in each precinct for each candidate and for and against each ballot issue and ballot question and the number of ballots rejected, except as otherwise provided in paragraph (b) of this subsection (3).

(b) If the total number of votes cast and counted in any precinct by early voters' and mail-in ballot is less than ten, the returns for all such precincts in the political subdivision shall be reported together.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. L. 2006: (3) added, p. 2035, § 21, effective June 6. L. 2007: Entire section amended, p. 1794, § 50, effective June 1.

Editor's note: This section was formerly numbered as 1-8-126.

Cross references: For judges' certificate and statement, see § 1-7-601; for surveying of returns, see article 10 of this title.

1-8-309. Return of mail-in and early voters' registration list. The mail-in and early voters' registration list shall be returned to the designated election official with the certificate required to be filed by section 1-8-308.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1794, § 51, effective June 1.

Editor's note: This section was formerly numbered as 1-8-127.

1-8-310. Preservation of rejected mail-in and early voters' ballots. All mail-in identification envelopes, ballot stubs, and mail-in and early voters' ballots rejected by the election judges in accordance with the provisions of section 1-8-304 shall be returned to the designated election official. All mail-in ballots received by the designated election official after 7 p.m. on the day of the election, together with the rejected mail-in and early voters' ballots returned by the election judges as provided in this section, shall remain in the sealed identification envelopes and shall be destroyed later as provided in section 1-7-802.

Source: L. 96: Entire article amended with relocations, p. 1763, § 46, effective July 1. **L. 2007:** Entire section amended, p. 1794, § 52, effective June 1.

Editor's note: This section was formerly numbered as 1-8-128.

Cross references: For challenges of absentee ballots, see § 1-9-206.

1-8-311. Maintenance of records of mail-in and early voting - transmittal of such lists to secretary of state. The designated election official shall maintain a record identifying the name and voting address of each elector who casts a ballot by mail-in or early voting at any election.

Source: L. 2000: Entire section added, p. 1758, § 1, effective January 1, 2001. **L. 2007:** Entire section amended, p. 1794, § 53, effective June 1.

ARTICLE 8.5

Provisional Ballots

1-8.5-101.	Provisional ballot - entitlement to vote.	1-8.5-107.	Electors who move before close of registration - effect of provisional ballot.
1-8.5-101.5.	Electronic voting device - use for casting provisional ballot.	1-8.5-108.	Electors who move after close of registration - effect of provisional ballot.
1-8.5-102.	Form of provisional ballot.	1-8.5-109.	Electors who vote outside precinct of residence - effect of provisional ballot.
1-8.5-103.	Provisional ballot affidavit.	1-8.5-110.	Handling of provisional ballots - reporting of results.
1-8.5-104.	Voting procedure - provisional ballot.	1-8.5-111.	Information system.
1-8.5-105.	Verification of provisional ballot information - counting procedure.	1-8.5-112.	Rules.
1-8.5-106.	Counting of provisional ballots.		

1-8.5-101. Provisional ballot - entitlement to vote. (1) At any election conducted pursuant to this title, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the registration list for the precinct or upon examination of the records on file with the county clerk and recorder shall be entitled to cast a provisional ballot in accordance with this article.

(2) An elector who desires to vote but does not show identification in accordance with section 1-7-110 (2) may cast a provisional ballot.

(3) If an elector applies for a mail-in ballot but spoils it or otherwise does not cast it, the elector may cast a provisional ballot at the polling place, vote center, or early voter's polling place if the elector affirms under oath that the elector has not and will not cast the mail-in ballot. The provisional ballot shall be counted if the designated election official verifies that the elector is registered to vote and did not cast the mail-in ballot and if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105.

(4) No elector shall be denied the right to cast a provisional ballot in any election held pursuant to this title.

Source: L. 2005: Entire article added, p. 1415, § 39, effective June 6; entire article added, p. 1450, § 39, effective June 6. **L. 2007:** (3) amended, p. 1794, § 54, effective June 1.

1-8.5-101.5. Electronic voting device - use for casting provisional ballot. (1) An electronic voting device may be used to cast a provisional ballot if the device is certified by the secretary of state for that purpose.

(2) If an electronic voting device that is certified for use with provisional ballots is used in an election, the designated election official shall determine whether electors casting provisional ballots shall use the electronic voting device or paper provisional ballots.

Source: L. 2006: Entire section added, p. 2033, § 15, effective June 6.

1-8.5-102. Form of provisional ballot. (1) A provisional ballot shall contain text clearly identifying it as a provisional ballot.

(2) An elector casting a provisional ballot shall complete an affidavit and receive information and instructions on the voting and handling of provisional ballots. The secretary of state shall prescribe

by rules promulgated in accordance with article 4 of title 24, C.R.S., the language of the affidavit, information, and instructions.

(3) Each polling place using paper provisional ballots shall have on hand a sufficient number of provisional ballots in all ballot styles applicable to that polling place and a sufficient number of provisional ballot envelopes.

Source: L. 2005: Entire article added, p. 1415, § 39, effective June 6; entire article added, p. 1450, § 39, effective June 6. **L. 2006:** (2) and (3) amended, p. 2033, § 16, effective June 6.

1-8.5-103. Provisional ballot affidavit. (1) The provisional ballot affidavit shall contain language prescribed by the secretary of state by rule and shall include an attestation, a notice of perjury, a warning of the penalty for falsifying the affidavit, and information sufficient to verify the elector's eligibility to vote and to register the elector to vote or transfer the elector's registration.

(2) (a) The provisional ballot affidavit shall constitute a voter registration application for the voter for future elections. Any previous voter registration for the voter shall be cancelled pursuant to section 1-2-603 (1).

(b) This subsection (2) shall not apply to an elector who casts a provisional ballot pursuant to section 1-8.5-101 (2) or (3).

Source: L. 2005: Entire article added, p. 1415, § 39, effective June 6; entire article added, p. 1450, § 39, effective June 6.

1-8.5-104. Voting procedure - provisional ballot. (1) An elector casting a provisional ballot shall complete and sign the provisional ballot affidavit and cast the ballot.

(2) The fact that an elector casts a provisional ballot shall be indicated on the signature card or pollbook next to the elector's name.

(3) The election judge shall examine the provisional ballot affidavit. If the election judge notices that the elector did not sign the affidavit, the election judge shall inform the elector that the provisional ballot will not be counted if the affidavit is not signed.

(4) If an elector who is casting a provisional ballot does not show identification as required by section 1-7-110 (2), the election official shall indicate on a space provided on the provisional ballot envelope that the elector did not show identification.

(5) If paper provisional ballots and envelopes are used in an election, the provisional ballot envelope containing the marked provisional ballot shall be deposited in a ballot container. All paper provisional ballots cast shall remain sealed in their envelopes for return to the county clerk and recorder or designated election official.

(6) After an elector casts a provisional ballot, the election official shall give the elector a written notice that an elector who casts a provisional ballot has the right to know whether the vote was counted and the reason if the provisional ballot was not counted. The notice shall specify the toll-free telephone number, internet website, or other free access system established by the secretary of state or the designated election official by means of which the elector may receive this information about the elector's provisional ballot.

Source: L. 2005: Entire article added, p. 1416, § 39, effective June 6; entire article added, p. 1451, § 39, effective June 6. **L. 2006:** (1) and (5) amended, p. 2033, § 17, effective June 6.

1-8.5-105. Verification of provisional ballot information - counting procedure. (1) In accordance with this section and using the procedures and databases prescribed by the secretary of state by rules promulgated in accordance with article 4 of title 24, C.R.S., the designated election official shall attempt to verify that an elector who cast a provisional ballot is eligible to vote. The designated election official or designee shall complete the preliminary verification of the elector's eligibility to vote before the ballot is counted in accordance with subsection (4) of this section.

(2) If the elector signs but does not fill in all the information requested on the provisional ballot affidavit, the ballot shall be counted only if the designated election official is able to determine that the elector was eligible to vote in the precinct and county.

(3) (a) If a provisional ballot affidavit is not signed, the designated election official shall send a letter to the elector no later than two days after the election informing the elector that the affidavit was not signed and that the provisional ballot cannot be counted unless the affidavit is signed. The letter shall state that the elector may come to the office of the county clerk and recorder to sign the provisional ballot affidavit no later than eight days after the election.

(b) If the elector does not sign the provisional ballot affidavit after receiving notice pursuant to paragraph (a) of this subsection (3), the provisional ballot shall not be counted.

(c) The designated election official shall retain a copy of the letter sent pursuant to paragraph (a) of this subsection (3).

(4) The designated election official shall determine the time for the verification and counting of provisional ballots to begin in accordance with rules promulgated by the secretary of state. A board appointed by the designated election official shall count all verified provisional ballots in accordance with the procedure prescribed by the designated election official in accordance with this title and the election rules of the secretary of state.

(5) The designated election official shall complete the verification and counting of all provisional ballots within ten days after a primary election and within fourteen days after a general, odd-year, or coordinated election. The designated election official shall count all mail-in ballots cast in an election before counting any provisional ballots cast by electors who requested mail-in ballots for the election.

Source: L. 2005: Entire article added, p. 1416, § 39, effective June 6; entire article added, p. 1451, § 39, effective June 6. L. 2006: (1) and (4) amended, p. 2034, § 18, effective June 6. L. 2007: (5) amended, p. 1795, § 55, effective June 1.

1-8.5-106. Counting of provisional ballots. If the designated election official verifies that an elector who cast a provisional ballot in accordance with this article is eligible to vote, the provisional ballot shall be counted. If the elector's registration cannot be verified, the ballot shall not be counted.

Source: L. 2005: Entire article added, p. 1417, § 39, effective June 6; entire article added, p. 1452, § 39, effective June 6.

1-8.5-107. Electors who move before close of registration - effect of provisional ballot. (1) A person who moves to Colorado from another state no later than the thirtieth day before an election but fails to register to vote before the close of registration may cast a provisional ballot, but the ballot shall not be counted. The provisional ballot affidavit shall serve as the person's voter registration application for future elections.

(2) (a) A registered elector who moves from the county in which the elector is registered to another county in the state no less than thirty days before an election but fails to register to vote in the new county of residence before the close of registration may complete an emergency registration form at the office of the county clerk and recorder pursuant to section 1-2-217.5 or may cast a provisional ballot at a polling place, vote center, or early voter's polling place.

(b) If the elector completes an emergency registration form on an election day and the county clerk and recorder is unable to verify the elector's qualification to vote, the elector may cast a provisional ballot.

(c) If the elector casts a provisional ballot, the ballot shall be counted if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

(3) If a registered elector moves from the precinct in which the elector is registered to another precinct within the same county before the close of registration but fails to register at the new address or

complete a change of address form pursuant to section 1-2-216 (4) (a), the elector may cast a provisional ballot, which shall be counted if the county clerk and recorder or designated election official verifies that the elector is eligible to vote in the elector's new precinct of residence.

Source: L. 2005: Entire article added, p. 1417, § 39, effective June 6; entire article added, p. 1452, § 39, effective June 6.

1-8.5-108. Electors who move after close of registration - effect of provisional ballot. (1) A person who moves to Colorado from another state in the twenty-nine days before an election may cast a provisional ballot, but the ballot shall not be counted. The provisional ballot affidavit shall serve as the person's voter registration application for future elections.

(2) If an elector who moves from the county in which the elector is registered to another county during the twenty-nine days before an election does not vote in the county where registered pursuant to section 1-2-217 (1) and instead casts a provisional ballot in the new county of residence, the elector's votes for federal and statewide offices for which the elector is eligible to vote and statewide ballot issues and ballot questions shall be counted. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

(3) If an elector who moves from the precinct in which the elector is registered to another precinct in the same county during the twenty-nine days before an election does not vote in the precinct where registered pursuant to section 1-2-217 (2) and instead casts a provisional ballot in the new precinct of residence, the elector's votes for federal and statewide offices for which the elector is eligible to vote and statewide ballot issues and ballot questions shall be counted. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

Source: L. 2005: Entire article added, p. 1418, § 39, effective June 6; entire article added, p. 1453, § 39, effective June 6. **L. 2006:** (2) and (3) amended, p. 2034, § 19, effective June 6.

1-8.5-109. Electors who vote outside precinct of residence - effect of provisional ballot. If an elector casts a provisional ballot at a polling place in a precinct other than the precinct in which the elector is registered but within the elector's county of residence, the elector's votes for federal offices for which the elector is eligible to vote and the elector's votes for statewide offices and statewide ballot issues and ballot questions shall be counted. Except for ballots cast in accordance with section 1-8.5-107 (2) or 1-8.5-108 (2) by electors who moved from one county to another county, a provisional ballot cast by an elector in a county other than the elector's county of residence shall not be counted.

Source: L. 2005: Entire article added, p. 1418, § 39, effective June 6; entire article added, p. 1453, § 39, effective June 6. **L. 2006:** Entire section amended, p. 2035, § 20, effective June 6; entire section amended, p. 280, § 1, effective August 7.

Editor's note: Amendments to this section by House Bill 06-1198 and Senate Bill 06-170 were harmonized.

1-8.5-110. Handling of provisional ballots - reporting of results. (1) Provisional ballots shall be kept separate from all other ballots and counted separately.

(2) If twenty-five or more provisional ballots are cast and counted in a county, the designated election official shall report the results of voting by provisional ballot as a separate total. If fewer than twenty-five provisional ballots are cast and counted, the results of voting by provisional ballot shall be included in the results of voting by mail-in ballot.

(3) Votes cast by provisional ballot shall not be included in any unofficial results reported and shall be reported only as part of the official canvass.

(4) The designated election official shall keep a log of each provisional ballot cast, each provisional ballot counted, and each provisional ballot rejected. The code for the acceptance or rejection of the provisional ballot as prescribed by the secretary of state shall be marked on the log. The designated

election official shall keep all rejected provisional ballots in their unopened envelopes for no less than twenty-five months.

Source: L. 2005: Entire article added, p. 1418, § 39, effective June 6; entire article added, p. 1453, § 39, effective June 6. **L. 2007:** (2) amended, p. 1795, § 56, effective June 1.

1-8.5-111. Information system. For any election held on or after January 1, 2004, in which a provisional ballot is cast, the county clerk and recorder or designated election official shall establish a system allowing an elector who cast a provisional ballot to discover whether the ballot was counted and, if the ballot was not counted, the reason the ballot was not counted. The system shall provide access to this information at no cost to the voter by toll-free telephone call, internet website, or other suitable medium, in accordance with the federal "Help America Vote Act of 2002", P.L. No. 107-252. Information about a provisional ballot shall be disclosed only to the voter who cast the ballot.

Source: L. 2005: Entire article added, p. 1419, § 39, effective June 6; entire article added, p. 1454, § 39, effective June 6.

1-8.5-112. Rules. The secretary of state shall promulgate all appropriate rules in accordance with article 4 of title 24, C.R.S., for the purpose of ensuring the uniform application of this article.

Source: L. 2005: Entire article added, p. 1419, § 39, effective June 6; entire article added, p. 1454, § 39, effective June 6.

ARTICLE 9

Challenges

Editor's note: This article was numbered as article 16 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973 and annual supplements to this volume; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section. 1963.

	PART 1	1-9-205.	Refusal to answer questions or take oath. (Repealed)
	CHALLENGES TO REGISTRATION	1-9-206.	Challenges of absentee ballots. (Repealed)
1-9-101.	Challenge of illegal or fraudulent registration.	1-9-207.	Challenges of ballots cast by mail.
	PART 2	1-9-208.	Challenges of provisional ballots.
	CHALLENGES TO VOTING	1-9-209.	Challenges delivered to district attorney.
1-9-201.	Right to vote may be challenged.	1-9-210.	Copy of challenge delivered to elector.
1-9-202.	Challenge to be made by written oath.		PART 3
1-9-203.	Challenge questions asked person intending to vote.		PROVISIONAL BALLOTS
1-9-204.	Oath of challenged elector.	1-9-301 to 1-9-306.	(Repealed)

PART 1

CHALLENGES TO REGISTRATION

1-9-101. Challenge of illegal or fraudulent registration. (1) (a) Any registered elector may, by written challenge, protest against the registration of any person whose name appears in a county registration record. The written challenge shall state the precinct number, the name of the challenged registrant, the basis for such challenge, the facts supporting the challenge, and some documentary evidence to support the basis for the challenge, and shall bear the signature and address of the challenger. The written challenge and supporting evidence shall be filed with the county clerk and recorder no later than sixty days before any election. The county clerk and recorder shall notify the registrant of the challenge and shall set a time and place for a hearing to be held not later than thirty days after the filing of the challenge, at which hearing the challenged registrant shall have the opportunity to appear. The person challenging the registration shall appear and shall bear the burden of proof of the allegations in the challenge. The county clerk and recorder shall conduct the hearing and receive testimony and evidence, shall render a decision in accordance with paragraph (b) of this subsection (1) no later than five days thereafter, and shall notify both parties of the decision.

(b) In rendering a decision, the county clerk and recorder shall have the following options:

(I) If the county clerk and recorder finds sufficient evidence to support the allegations in the challenge, the registered elector's name shall be canceled from the registration book;

(II) If the county clerk and recorder finds some evidence but not sufficient evidence to support the allegations in the challenge, the registration record of the elector may be marked with the word "Inactive", and the procedures of section 1-2-605 in regard to registered electors who fail to vote in a general election shall apply; or

(III) If the county clerk and recorder finds no evidence to support the allegations in the challenge, the challenge to cancel the registered elector's name from the registration book shall be denied.

(2) All appeals from the decision of the county clerk and recorder shall be to the district court within three days after the decision is issued. The appellant shall file in the district court a verified petition setting forth the facts presented at the hearing, the decision of the county clerk and recorder, and the basis for the appeal. Within twenty-four hours, the clerk of the district court shall mail to the other party a notice of the appeal and the time set for hearing, which shall be not less than three days nor more than five days after the date of filing.

(3) The court shall hear the testimony and other evidence and investigate summarily and, within forty-eight hours after the close of the evidence, determine whether or not the charges are sustained. Only competent legal evidence shall be received at the hearing or considered by the court, and no name registered in accordance with law shall be canceled from the registration book unless it is proven that the challenged person does not reside at the address provided by the person at the time of registration. No presumption shall be made against any person whose registration is challenged merely because of the failure of that person to attend the hearing. The court shall have the power to subpoena any person as a witness at the hearing and make any necessary investigation to ascertain the truth of any of the charges in the petition if the method of the investigation does not cause unnecessary delay or interfere with the final disposition of the cause within the time provided for in this section. The hearing on any petition shall be summary and final and shall not be subject to delay. At the close of the hearing, the court shall announce the names in the petition as to which the charges have been sustained and shall direct the clerk of the court to certify forthwith to the county clerk and recorder the lists of names of those persons, with their addresses, arranged alphabetically and according to precinct. The county clerk and recorder, upon receipt of the list from the court, shall forthwith cancel those names from the registration book for the proper precinct with the notation that the names were canceled pursuant to court order, giving the date of the order. The decision of the court is final, and no appeal shall lie to any other court; except that the supreme court, in the exercise of its discretion, may review any such proceedings in a summary way.

Source: L. 80: Entire article R&RE, p. 380, § 1, effective January 1, 1981. L. 87: (1) and (3) amended, p. 295, § 29, effective June 26. L. 89: (3) amended, p. 309, § 20, effective May 9. L. 91: (1)(b)(II) amended, p. 637, § 76, effective May 1. L. 92: Entire article amended, p. 771, § 12, effective January 1, 1993. L. 93: (1)(b)(II) amended, p. 1769, § 16, effective June 6. L. 97: (1)(b)(II) amended, p. 477, § 21, effective July 1. L. 99: (1)(a) amended, p. 778, § 63, effective May 20. L. 2000: (1)(a) amended, p. 301, § 1, effective August 2.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-12-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308. **C.J.S.** See 29 C.J.S., Elections, § 47.

PART 2

CHALLENGES TO VOTING

1-9-201. Right to vote may be challenged. (1) (a) A person's right to vote at a polling place or in an election may be challenged.

(b) If a person whose right to vote is challenged refuses to answer the questions asked or sign the challenge form in accordance with section 1-9-203 or take the oath pursuant to section 1-9-204, the person shall be offered a provisional ballot. If the person casts a provisional ballot, the election judge shall attach the challenge form to the provisional ballot envelope and indicate "Challenge" on the provisional ballot envelope.

(2) An election judge shall challenge any person intending to vote who the judge believes is not an eligible elector. In addition, challenges may be made by watchers or any eligible elector of the precinct.

(3) A challenge at a polling place shall be made in the presence of the person whose right to vote is challenged.

Source: **L. 80:** Entire article R&RE, p. 381, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 772, § 12, effective January 1, 1993. **L. 2005:** Entire section amended, p. 1419, § 40, effective June 6; entire section amended, p. 1454, § 40, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308. **C.J.S.** See 29 C.J.S., Elections, § 329.

1-9-202. Challenge to be made by written oath. Each challenge shall be made by written oath, shall set forth the name of the person challenged and the specific factual basis for the challenge of the person's right to vote, and shall be signed by the challenger under penalty of perjury in the second degree, as specified in section 1-13-104. The election judges shall forthwith deliver all challenges to the designated election official. No oral challenge shall be permitted.

Source: **L. 80:** Entire article R&RE, p. 381, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 773, § 12, effective January 1, 1993. **L. 2005:** Entire section amended, p. 1420, § 41, effective June 6; entire section amended, p. 1455, § 41, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-103 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For oaths and affirmations generally, see article 12 of title 24.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 329.

1-9-203. Challenge questions asked person intending to vote.

(1) (Deleted by amendment, L. 2005, pp. 1420, 1455, §§ 42, 42, effective June 6, 2005.)

(2) If the person is challenged as not eligible because the person is not a citizen, an election judge shall ask the following question:

(a) Are you a citizen of the United States?

(b) (Deleted by amendment, L. 93, p. 1432, § 109, effective July 1, 1993.)

(3) If the person is challenged as not eligible because the person has not resided in this state and precinct for thirty days immediately preceding the election, an election judge shall ask the following questions:

(a) Have you resided in this state and precinct for the thirty days immediately preceding this election?

(b) Have you been absent from this state during the thirty days immediately preceding this election, and during that time have you maintained a home or domicile elsewhere?

(c) If so, when you left, was it for a temporary purpose with the intent of returning, or did you intend to remain away?

(d) Did you, while absent, look upon and regard this state as your home?

(e) Did you, while absent, vote in any other state or any territory of the United States?

(4) If the person is challenged as not eligible because the person is not eighteen years of age or older, an election judge shall ask the following question: To the best of your knowledge and belief, are you eighteen years of age or older?

(5) If the person is challenged as not eligible because the person is not a property owner or the spouse of a property owner, an election judge shall ask the following questions:

(a) Are you a property owner or the spouse of a property owner in this political subdivision and therefore eligible to vote?

(b) What is the address or, for special district elections where an address is not available, the location of the property which entitles you to vote in this election?

(6) An election judge shall put all other questions to the person challenged as may be necessary to test the person's qualifications as an eligible elector at the election.

(7) If the person challenged answers satisfactorily the questions asked in accordance with this section and signs the oath pursuant to section 1-9-204, the election judge shall offer the person challenged a regular ballot, and the challenger may withdraw the challenge. The election judge shall indicate in the proper place on the challenge form whether the challenge was withdrawn or whether the challenged elector refused to answer the questions and left the polling place without voting a provisional ballot.

Source: L. 80: Entire article R&RE, p. 382, § 1, effective January 1, 1981. L. 91: (3) amended, p. 637, § 77, effective May 1. L. 92: Entire article amended, p. 773, § 12, effective January 1, 1993. L. 93: (2) and (5)(b) amended, p. 1432, § 109, effective July 1. L. 94: IP(3), (3)(a), and (3)(b) amended, p. 1771, § 32, effective January 1, 1995. L. 95: (3)(b) amended, p. 843, § 66, effective July 1. L. 2005: (1) and (7) amended, p. 1420, § 42, effective June 6; (1) and (7) amended, p. 1455, § 42, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-104 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For oaths and affirmations generally, see article 12 of title 24.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 329.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A voter can be challenged only for failure to meet the qualification of elector requirements. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

Thus a voter cannot be disenfranchised because he has not paid a property or other ad valorem

tax on real estate. Sheldon v. Moffat Tunnel Comm'n, 335 F. Supp. 251 (D. Colo. 1971).

There is no method for verification or challenge of social security number submitted by a registrant. Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974).

1-9-204. Oath of challenged elector. (1) An election judge shall tender an oath substantially in the following form: "I do solemnly swear or affirm that I have fully and truthfully answered all questions that have been put to me concerning my place of residence and my qualifications as an eligible elector at this election. I further swear or affirm that I am a citizen of the United States of the age of eighteen years or older; that I have been a resident of this state and precinct for thirty days immediately preceding this election and have not maintained a home or domicile elsewhere; that I am a registered elector in this precinct; that I am eligible to vote at this election; and that I have not previously voted at this election."

(2) After the person has taken the oath or affirmation, a regular ballot shall be given to the person and an election judge shall write "sworn" on the pollbooks at the end of the person's name.

Source: **L. 80:** Entire article R&RE, p. 383, § 1, effective January 1, 1981. **L. 91:** (1) amended, p. 638, § 78, effective May 1. **L. 92:** Entire article amended, p. 774, § 12, effective January 1, 1993. **L. 94:** (1) amended, p. 1771, § 33, effective January 1, 1995. **L. 96:** (1) amended, p. 1763, § 47, effective July 1. **L. 99:** (1) amended, p. 778, § 64, effective May 20. **L. 2005:** Entire section amended, p. 1420, § 43, effective June 6; entire section amended, p. 1455, § 43, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-8-105 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For oaths and affirmations generally, see article 12 of title 24.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 308. **C.J.S.** See 29 C.J.S., Elections, § 329.

1-9-205. Refusal to answer questions or take oath. (Repealed)

Source: **L. 80:** Entire article R&RE, p. 383, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 774, § 12, effective January 1, 1993. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are the same as contained in 1-8-106 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-9-206. Challenges of absentee ballots. (Repealed)

Source: **L. 80:** Entire article R&RE, p. 383, § 1, effective January 1, 1981. **L. 92:** Entire article amended, p. 775, § 12, effective January 1, 1993. **L. 93:** Entire section amended, p. 1432, § 110, effective July 1. **L. 2002:** Entire section amended, p. 1636, § 21, effective June 7. **L. 2005:** Entire section amended, p. 1420, § 44, effective June 6; entire section amended, p. 1456, § 44, effective June 6. **L. 2007:** Entire section repealed, p. 1795, § 57, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, are similar to those contained in 1-7-114 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 338, 339.

C.J.S. See 29 C.J.S., Elections, §§ 329, 330.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

A controversy arising from the canvass of absentee ballots alleged to be illegal should be settled by

contest proceedings. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

And alleged error in including invalid absentee ballots or excluding valid ones cannot be reviewed by mandamus. People ex rel. Griffith v. Bundy, 107 Colo. 102, 109 P.2d 261 (1940).

1-9-207. Challenges of ballots cast by mail. The ballot of any elector that has been cast by mail may be challenged using a challenge form signed by the challenger under penalty of perjury setting forth the name of the person challenged and the basis for the challenge. Challenged ballots, except those rejected for an incomplete or incorrect affidavit by an elector on the returned mail ballot envelope, forgery of a deceased person's signature on a mail ballot affidavit, or submission of multiple ballots, shall be counted. The election judges shall forthwith deliver all challenges, together with the affidavits of the persons challenged, to the county clerk and recorder or designated election official, as applicable.

Source: L. 94: Entire section added, p. 1169, § 46, effective July 1. L. 2002: Entire section amended, p. 1636, § 22, effective June 7. L. 2005: Entire section amended, p. 1421, § 45, effective June 6; entire section amended, p. 1456, § 45, effective June 6. L. 2007: Entire section amended, p. 1795, § 58, effective June 1.

1-9-208. Challenges of provisional ballots. The ballot of any provisional voter may be challenged using a challenge form signed by the challenger under penalty of perjury setting forth the name of the person challenged and the basis for the challenge. Challenged provisional ballots, except those rejected for an incomplete, incorrect, or unverifiable provisional ballot affidavit, forgery of a deceased person's signature on a mail-in ballot affidavit, or submission of multiple ballots, shall be counted if the other requirements for counting provisional ballots are satisfied. The election judges shall deliver all challenges, together with the affidavits of the persons challenged, to the county clerk and recorder or the designated election official.

Source: L. 2002: Entire section added, p. 1636, § 23, effective June 7. L. 2005: Entire section amended, p. 1421, § 46, effective June 6; entire section amended, p. 1456, § 46, effective June 6. L. 2007: Entire section amended, p. 1796, § 59, effective June 1.

1-9-209. Challenges delivered to district attorney. The county clerk and recorder or designated election official shall forthwith deliver a challenge that is not withdrawn, along with the affidavit of the elector on the mail-in, provisional ballot, or mail ballot return envelope, to the district attorney for investigation and action. When practicable, the district attorney shall complete the investigation within ten days after receiving the challenge.

Source: L. 2005: Entire section added, p. 1421, § 47, effective June 6; entire section added, p. 1457, § 47, effective June 6. L. 2007: Entire section amended, p. 1796, § 60, effective June 1.

1-9-210. Copy of challenge delivered to elector. When a challenge is made to a person who cast a mail-in ballot, mail ballot, or provisional ballot and the person was not present at the time of the challenge, the county clerk and recorder or designated election official shall notify and mail a copy of the challenge to the person challenged in accordance with the rules of the secretary of state.

Source: L. 2005: Entire section added, p. 1422, § 47, effective June 6; entire section added, p. 1457, § 47, effective June 6. L. 2007: Entire section amended, p. 1796, § 61, effective June 1.

PART 3

PROVISIONAL BALLOTS

1-9-301 to 1-9-306. (Repealed)

Source: L. 2005: Entire part repealed, p. 1425, § 56, effective June 6; entire part repealed, p. 1461, § 56, effective June 6.

Editor's note: This part 3 was originally enacted in 2002. For amendments prior to its repeal in 2005, consult the red book table distributed with the session laws and the 2002 to 2004 Colorado Revised Statutes.

ARTICLE 10

Survey of Returns

Editor's note: This article was numbered as article 17 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

PART 1		PART 2	
SURVEY OF RETURNS - PARTISAN ELECTIONS		SURVEY OF RETURNS - NONPARTISAN ELECTIONS	
1-10-101.	Canvas board for partisan elections - appointment, fees, oaths.	1-10-201.	Canvass of nonpartisan elections.
1-10-101.5.	Duties of the canvass board.	1-10-202.	Canvass of votes in coordinated elections.
1-10-102.	Official abstract of votes cast - certification.	1-10-203.	Official abstract of votes cast - nonpartisan elections.
1-10-103.	Transmitting returns to the secretary of state - total of results.	1-10-204.	Imperfect returns.
1-10-104.	Imperfect returns - corrections.	1-10-205.	Corrections.
1-10-105.	Official abstract of votes cast - certification by secretary of state.		PART 3
1-10-106.	Summary of election results - statewide elections - early voting.	1-10-301 to 1-10-309.	RECOUNTS (Repealed)

PART 1

SURVEY OF RETURNS - PARTISAN ELECTIONS

1-10-101. Canvass board for partisan elections - appointment, fees, oaths. (1) (a) At least fifteen days before any primary, general, congressional vacancy, or special legislative election, the county chairpersons of each of the two major political parties in each county shall certify to the county clerk and recorder, in the manner prescribed by such clerk and recorder, the appointment of one or more registered electors to serve as a member of the county canvass board. The appointees, together with the county clerk and recorder, constitute the county canvass board. Each minor political party whose candidate is on the ballot and each unaffiliated candidate whose name is on the ballot in such election may designate, in the manner prescribed by such clerk and recorder, one watcher to observe the work of the county canvass board.

(b) If for any reason an appointee to the county canvass board refuses, fails, or is unable to serve, the appointee shall notify the county clerk and recorder. The county clerk and recorder, by the speediest and most convenient method, shall notify the county chairperson of the political party to which the appointee belongs. The county chairperson shall forthwith appoint another person to the county

canvass board. If the political party has no county chairperson or vice-chairperson or if a vacancy in the appointment occurs on the date of the meeting of the county canvass board so that there can be no specific compliance with the provisions of this section, the county clerk and recorder shall make the appointment or shall fill the vacancy as nearly in compliance with the intention of this section as possible.

(2) Each canvass board appointee shall receive a minimum fee of fifteen dollars for each day of service. The fee shall be set by the county clerk and recorder and shall be paid by the county for which the service is performed.

(3) Prior to assuming their duties, the members of the canvass board shall swear or affirm the following: "I,, do solemnly swear (or affirm) that I am a registered elector in precinct, in the county of; that I am a registered member of the party as shown on the registration books of the county clerk and recorder; and that I will faithfully perform the duties required of a member of the county canvass board."

Source: **L. 92:** Entire article R&RE, p. 775, § 13, effective January 1, 1993. **L. 99:** (1)(a) amended, p. 1390, § 11, effective June 4; entire section amended, p. 478, § 2, effective July 1. **L. 2002:** (1)(a) amended, p. 1638, § 25, effective June 7.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (1)(a) by House Bill 99-1160 and House Bill 99-1097 were harmonized.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 365.

C.J.S. See 29 C.J.S., Elections, §§ 375-379.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Canvassing in charter convention elections for home rule cities. Pursuant to art. XX, Colo. Const., governing home rule cities and providing for the election of members of a charter convention, it is the duty of the clerk of said city and county, to canvass the returns of an election for members of such charter convention and to issue certificates of election to the members elected. *McMurray v. Wright*, 19 Colo. App. 17, 73 P. 257 (1903).

1-10-101.5. Duties of the canvass board. The canvass board shall reconcile the ballots cast in an election to confirm that the number of ballots counted in that election does not exceed the number of ballots cast in that election. The canvass board also shall certify the abstract of votes cast in any election.

Source: **L. 99:** Entire section added, p. 478, § 3, effective July 1.

1-10-102. Official abstract of votes cast - certification. (1) No later than the thirteenth day after a primary election and no later than the seventeenth day after any other election coordinated by the county clerk and recorder, the canvass board shall complete its duties.

(2) (Deleted by amendment, L. 99, p. 479, § 4, effective July 1, 1999.)

(3) If a recount is held and the vote result changes, the county canvass board shall prepare and certify an amended official abstract of votes cast. If the vote result does not change after the recount, the county canvass board shall include a statement to that effect in the official abstract of votes cast.

Source: **L. 92:** Entire article R&RE, p. 776, § 13, effective January 1, 1993. **L. 94:** (1) and (3) amended, p. 1169, § 47, effective July 1. **L. 99:** Entire section amended, p. 479, § 4, effective July 1. **L. 2002:** (1) amended, p. 1638, § 26, effective June 7. **L. 2005:** (1) amended, p. 1422, § 48, effective June 6; (1) amended, p. 1457, § 48, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 362-368.

1-10-103. Transmitting returns to the secretary of state - total of results. (1) Immediately after the official abstract of votes cast has been certified and no later than the thirteenth day after a primary election and the eighteenth day after a general election, the county clerk and recorder shall transmit to the secretary of state the portion of the abstract of votes cast that contains the statewide abstract of votes cast.

(2) No later than the twentieth day after a primary election and no later than the twenty-fourth day after any other election, the secretary of state shall compile and total the returns received from all counties for all candidates, ballot issues, and ballot questions certified by the secretary of state, determine if a recount of any office, ballot issue, or ballot question is necessary, and order the appropriate recounts, if any.

(3) Each county clerk and recorder shall transmit a list of the names of those candidates elected to county offices to the secretary of state no later than the sixteenth day after the election.

Source: **L. 92:** Entire article R&RE, p. 777, § 13, effective January 1, 1993. **L. 94:** (1) amended, p. 1169, § 48, effective July 1. **L. 99:** Entire section amended, p. 479, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1638, § 27, effective June 7. **L. 2005:** (1) and (2) amended, p. 1422, § 49, effective June 6; (1) and (2) amended, p. 1457, § 49, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 369, 370.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The duty of canvassing is imposed on the state board of canvassers [now secretary of state] as an executive entity, not individually. Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

And is political and governmental in character. Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

Courts have no jurisdiction to control the state board of canvassers' [now secretary of state's] canvassing returns by mandamus. Greenwood Cem. Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892); Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

And even if the courts had jurisdiction the writ would lie only to command the board [now secretary] to act, and not to control his discretion by commanding him how to act. Orman v. People ex rel. Cooper, 18 Colo. App. 302, 71 P. 430 (1903).

1-10-104. Imperfect returns - corrections. (1) If, in the course of their duties, the canvass board or the secretary of state finds that the method of making or certifying returns from any precinct, county, or district does not conform to the requirements of law, the returns shall nevertheless be canvassed if they are sufficiently explicit in showing how many votes were cast for each candidate, ballot question, or ballot issue.

(2) If the canvass board or the secretary of state finds a clerical error or omission in the returns, the county clerk and recorder, after consultation with the election judges, shall make any correction required by the facts of the case. The election judges shall sign and submit to the canvass board any documentation required for any explanation or verification of the additions or corrections. The canvass board may adjourn from day to day for the purpose of obtaining the additions or corrections.

Source: L. 92: Entire article R&RE, p. 777, § 13, effective January 1, 1993. **L. 99:** Entire section amended, p. 480, § 6, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 363.

C.J.S. See 29 C.J.S., Elections, § 389.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Certificate mistakes cannot be corrected by reference to tally lists. Mistakes in filling out the certificates of the judges of elections cannot be corrected by the canvassers or precinct election officials by reference to the tally lists, inasmuch as errors of this kind do not

come within the provisions for correcting imperfect returns. *People ex rel. Miller v. Tool*, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231 (1905).

But election judges may correct where clerical mistake in certificate. Where the number of votes in precinct, as shown by the tallies and figures in the pollbook do not correspond to number certified, but there is a clear case of a clerical mistake in the certificate, the judges of election, when they are notified of the error, have a right to correct, and should correct, such error. *People ex rel. Harper v. Ingles*, 106 Colo. 213, 103 P.2d 475 (1940).

1-10-105. Official abstract of votes cast - certification by secretary of state. (1) After receiving the final abstracts of votes cast for all elections from the counties, including any recounts, the secretary of state shall prepare and certify an official statewide abstract of votes cast for all candidates, ballot issues, and ballot questions that the secretary of state certified for the ballot. For each contest, the statewide abstract of votes cast shall show the total number of votes received, with subtotals for each county in which the candidate was on the ballot, and the ballot wording for each ballot issue and ballot question.

(2) In the event of tie votes, the secretary of state shall include the method of resolving votes and the final result in the statewide abstract of votes cast.

(3) (Deleted by amendment, L. 99, p. 480, § 7, effective July 1, 1999.)

(4) In the event that an accurate and verifiable determination of the count cannot be made and therefore the secretary of state is unable to certify the election of any candidate, the secretary shall issue a report indicating the nature of the irregularity rather than issue a certification.

(5) The secretary of state shall publish on a biennial basis an official abstract of votes cast for all statewide elections held in the year of the general election and include the odd-number year immediately preceding that general election. The abstract shall contain the following information:

(a) All information included in the statewide abstract of votes cast, as provided in subsection (1) of this section;

(b) The names of candidates elected to county offices and the offices for which they were elected, as furnished by the county clerk and recorders;

(c) The reconciled total number of active, registered voters in each county on election day, as determined by the county clerk and recorders no later than forty-five days after the election;

(d) Based on the total number of active, registered voters, the percent of voter turnout in each county; and

(e) Any other information that the secretary of state determines would be interesting or useful to the electorate or other elected officials.

(6) No later than June of the odd-numbered year immediately following the general election, the secretary of state shall furnish each county clerk and recorder a copy of the complete official biennial statewide abstract of votes cast at no charge.

Source: L. 92: Entire article R&RE, p. 777, § 13, effective January 1, 1993. **L. 94:** (1) amended, p. 1169, § 49, effective July 1. **L. 99:** Entire section amended, p. 480, § 7, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-104 (2) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-109 (2) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 369, 370.

C.J.S. See 29 C.J.S., Elections, § 392.

Annotator's note. For a relevant case construing the provisions of this section, see the annotations under former § 1-10-104 in the 1980 replacement volume.

Certificate mistakes cannot be corrected by reference to tally lists. Mistakes in filling out the certificates of the judges of elections cannot be corrected by the canvassers or precinct election officials by reference to the tally lists, inasmuch as errors of this kind do not come within the provisions for correcting imperfect returns.

People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229, 86 P. 231, 117 Am. St. R. 198, 6 L.R.A. (n.s.) 822 (1905) (decided under former law).

But election judges may correct where clerical mistake in certificate. here the number of votes in precinct, as shown by the tallies and figures in the pollbook do not correspond to number certified, but there is a clear case of a clerical mistake in the certificate, the judges of election, when they are notified of the error, have a right to correct, and should correct, such error. People ex rel. Harper v. Ingles, 106 Colo. 213, 103 P.2d 475 (1940) (decided under former law).

1-10-106. Summary of election results - statewide elections - early voting. (1) (a) Within sixty days after a statewide election, the designated election official shall prepare and make available to the public a statement of the total number of votes cast in the election for each candidate and for and against each ballot issue and ballot question on the ballot certified by the designated election official pursuant to section 1-5-203.

(b) In a county that uses only direct record electronic voting machines for early voting, the statement prepared pursuant to paragraph (a) of this subsection (1) shall give the results of early voting for each precinct.

(c) In a county that uses vote centers in accordance with section 1-5-102.7, on and after January 1, 2008, the statement prepared pursuant to paragraph (a) of this subsection (1) shall give the election results for each precinct, excluding votes cast by early voting or mail-in ballot.

(2) The designated election official may charge a fee for a copy of the statement prepared pursuant to this section in an amount not to exceed the actual cost of making the copy.

(3) The designated election official shall retain all materials used to compile the statement required by this section for a period of at least twenty-five months.

Source: L. 2005: Entire section added, p. 1422, § 50, effective June 6; entire section added, p. 1457, § 50, effective June 6. **L. 2006:** (1)(c) amended, p. 2035, § 22, effective June 6. **L. 2007:** (1)(c) amended, p. 1796, § 62, effective June 1.

PART 2

SURVEY OF RETURNS - NONPARTISAN ELECTIONS

1-10-201. Canvass of nonpartisan elections. (1) Except as provided for special districts in subsection (1.5) of this section, at least fifteen days before any nonpartisan election that is not coordinated by the county clerk and recorder, the governing body or bodies that called the election shall appoint two registered electors of the political subdivision to serve as members of the canvass board. One of the two persons appointed may be a member of the governing body. The persons so appointed and the designated election official constitute the canvass board for the election. If the election is

coordinated between two or more governing bodies, the canvass board shall be appointed in accordance with the intergovernmental agreement between the governing bodies.

(1.5) Unless otherwise directed by the board of directors of a special district, at least fifteen days before any regular special district election, the designated election official shall appoint at least one member of the board of such district and at least one eligible elector of the special district who is not a member of such board to assist the designated election official in the survey of returns. The persons so appointed and the designated election official constitute the board of canvassers for the election.

(2) To the fullest extent possible, no member of the canvass board nor the member's spouse shall have a direct interest in the election.

(3) If for any reason any person appointed as a member of the canvass board refuses, fails, or is unable to serve, that appointed person shall notify the designated election official, who shall appoint another person with the same qualifications, if available, to the canvass board.

(4) Each canvass board member who is not a member of the governing body shall receive a minimum fee of fifteen dollars for each day of service. The fee shall be set by the designated election official and shall be paid by the political subdivision for which the service is performed.

(5) Prior to assuming their duties, the members of the canvass board shall swear or affirm the following: "I, _____, do solemnly swear (or affirm) that I am a registered elector in the county of _____ and of the state of Colorado and that I will faithfully perform the duties required of a member of the canvass board."

Source: **L. 92:** Entire article R&RE, p. 778, § 13, effective January 1, 1993. **L. 94:** Entire section amended, p. 1170, § 50, effective July 1. **L. 99:** Entire section amended, p. 481, § 8, effective July 1; (1) amended and (1.5) added, p. 451, § 8, effective August 4.

Editor's note: Amendments to subsection (1) by House Bill 99-1268 and House Bill 99-1160 were harmonized.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 364-366. **C.J.S.** See 29 C.J.S., Elections, § 375.

1-10-202. Canvass of votes in coordinated elections. For any election coordinated by the county clerk and recorder, the canvass board shall be appointed in accordance with the intergovernmental agreement between the governing bodies holding the election.

Source: **L. 92:** Entire article R&RE, p. 778, § 13, effective January 1, 1993. **L. 93:** Entire section amended, p. 1433, § 111, effective July 1. **L. 99:** Entire section amended, p. 482, § 9, effective July 1.

1-10-203. Official abstract of votes cast - nonpartisan elections. (1) No later than seven days after an election, the canvass board shall certify to the designated election official the official abstract of votes cast for all candidates, ballot issues, and ballot questions in that election.

(2) If the election is canceled pursuant to section 1-5-208, the designated election official shall note the cancellation and the declared winner on the certified statement of results and the abstract of votes cast, if one is prepared.

(3) If a recount is held and the result of the election changes after the recount, the canvass board shall prepare and certify an amended official abstract of votes cast. If the result of an election subject to a recount does not change after such recount, the canvass board shall include a statement of that fact in the abstract of votes cast.

Source: **L. 92:** Entire article R&RE, p. 778, § 13, effective January 1, 1993. **L. 93:** (1) amended, p. 1433, § 112, effective July 1. **L. 94:** Entire section amended, p. 1170, § 51, effective July 1. **L. 95:** Entire section amended, p. 843, § 67, effective July 1. **L. 99:** Entire section amended, p. 482, § 10, effective July 1.

1-10-204. Imperfect returns. If the canvass board finds that the method of making or certifying returns from any precinct does not conform to the requirements of law, the returns of the votes cast in that precinct shall nevertheless be canvassed if the returns are sufficiently explicit to enable the canvass board to determine how many votes were cast for each candidate, ballot question, or ballot issue.

Source: **L. 92:** Entire article R&RE, p. 779, § 13, effective January 1, 1993. **L. 94:** Entire section amended, p. 1171, § 52, effective July 1. **L. 99:** Entire section amended, p. 483, § 11, effective July 1.

1-10-205. Corrections. If the canvass board finds a clerical error or omission in the returns, the board shall consult with the election judges from whom the returns were received to resolve the discrepancies. The election judges shall submit to the canvass board any documentation for verification of the additions and corrections, and the canvass board shall make any additions and corrections required by the facts of the case. The canvass board may adjourn from day to day for the purpose of obtaining the corrections and additions.

Source: **L. 92:** Entire article R&RE, p. 779, § 13, effective January 1, 1993. **L. 99:** Entire section amended, p. 483, § 12, effective July 1.

PART 3

RECOUNTS

1-10-301 to 1-10-309. (Repealed)

Source: **L. 99:** Entire part repealed, p. 492, § 24, effective July 1.

Editor's note: The substantive provisions of this part 3 were contained in this article when it was repealed and reenacted in 1980 and 1992. For historical information prior to 1992, see the editor's note following the article heading. The provisions contained in sections 1-10-301 to 1-10-307 are now located in article 10.5 of this title. For amendments to this section after the repeal and reenactment of the entire article in 1992, consult the source notes in the 1998 Colorado Revised Statutes.

ARTICLE 10.5

Recounts

Editor's note: This article was enacted in 1999 containing relocated provisions. The former C.R.S. number of each section that has been relocated is shown in an editor's note following each section.

1-10.5-101.	Recounts required - expenses.	1-10.5-105.	Notice of recount.
1-10.5-102.	Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues.	1-10.5-106.	Request for recount by interested party - definitions.
1-10.5-103.	Recount for other offices, ballot issues, and ballot questions in an election coordinated by the county clerk and recorder.	1-10.5-107.	Canvass board to conduct recount.
1-10.5-104.	Recount for nonpartisan elections not coordinated by the county clerk and recorder.	1-10.5-108.	Method of recount. (Repealed)
		1-10.5-109.	Challenge of recount.
		1-10.5-110.	Procedures for recount on direct recording electronic voting equipment. (Repealed)

1-10.5-101. Recounts required - expenses.

(1) (a) (Deleted by amendment, L. 2001, p. 1265, § 1, effective June 5, 2001.)

(b) A recount of any election contest shall be held if the difference between the highest number of votes cast in that election contest and the next highest number of votes cast in that election contest is less than or equal to one-half of one percent of the highest vote cast in that election contest. If there is more than one person to be elected in an election contest, a recount shall be held if the difference between the votes cast for the candidate who won the election with the least votes and the candidate who lost the election with the most votes is less than or equal to one-half of one percent of the votes cast for the candidate who won the election with the least votes. A recount shall occur only after the canvass board certifies the original vote count.

(2) Except as provided in section 1-10.5-106, any expenses incurred in conducting a recount in any political subdivision shall be paid by the entity that certified the candidate, ballot question, or ballot issue for the ballot. Members of the canvass board who assist in any recount shall receive the same fees authorized for counting judges in section 1-6-115.

Source: L. 99: Entire article added with relocations, p. 483, § 13, effective July 1. **L. 2001:** (1) amended, p. 1265, § 1, effective June 5. **L. 2006:** (1)(b) amended, p. 277, § 1, effective August 7.

1-10.5-102. Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues. (1) If the secretary of state determines that a recount is required for the office of United States senator, representative in congress, any state office or district office of state concern, any state ballot question, or any state ballot issue certified for the ballot by the secretary of state, the secretary of state shall order a complete recount of all the votes cast for that office, state ballot question, or state ballot issue no later than the twenty-fifth day after the election.

(2) The secretary of state shall notify the county clerk and recorder of each county involved by registered mail and facsimile transmission of a public recount to be conducted in the county at a place prescribed by the secretary of state. The recount shall be completed no later than the thirtieth day after any election. The secretary of state shall promulgate and provide each county clerk and recorder with the necessary rules and regulations to conduct the recount in a fair, impartial, and uniform manner, including provisions for watchers during the recount. Any rule or regulation concerning the conduct of a recount

shall take into account the type of voting system and equipment used by the county in which the recount is to be conducted.

(3) (a) Prior to any recount, the canvass board shall choose at random and test voting devices used in the candidate race, ballot issue, or ballot question that is the subject of the recount. The board shall use the voting devices it has selected to conduct a comparison of the machine count of the ballots counted on each such voting device for the candidate race, ballot issue, or ballot question to the corresponding manual count of:

(I) In the case of an election taking place in a county prior to the date the county has satisfied the requirements of section 1-5-802, the ballots; or

(II) For an election taking place in a county on or after the date the county has satisfied the requirements of section 1-5-802, the voter-verified paper records.

(b) If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are identical, or if any discrepancy is able to be accounted for by voter error, then the recount may be conducted in the same manner as the original ballot count. If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are not identical, or if any discrepancy is not able to be accounted for by voter error, a presumption shall be created that the voter-verified paper records will be used for a final determination unless evidence exists that the integrity of the voter-verified paper records has been irrevocably compromised. The secretary of state shall decide which method of recount is used in each case, based on the secretary's determination of which method will ensure the most accurate count, subject to judicial review for abuse of discretion. Nothing in this subsection (3) shall be construed to limit any person from pursuing any applicable legal remedy otherwise provided by law.

(c) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting the test of voting devices for the recount required by paragraph (a) of this subsection (3). The rules shall account for:

(I) The number of ballots cast in the candidate race, ballot issue, or ballot question that is the subject of the recount;

(II) An audit of each type of voting device utilized by the county in the candidate race, ballot issue, or ballot question that is the subject of the recount; and

(III) The confidentiality of the ballots cast by the electors in the candidate race, ballot issue, or ballot question that is the subject of the recount.

Source: L. 99: Entire article added with relocations, p. 484, § 13, effective July 1. L. 2001: (2) amended, p. 300, § 1, effective August 8. L. 2002: (1) and (2) amended, p. 1638, § 28, effective June 7. L. 2005: (2) and (3) amended, p. 1423, § 51, effective June 6; (2) and (3) amended, p. 1458, § 51, effective June 6.

Editor's note: This section was formerly numbered as 1-10-301.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 359-361.

1-10.5-103. Recount for other offices, ballot issues, and ballot questions in an election coordinated by the county clerk and recorder. In any election coordinated by the county clerk and recorder, if it appears, as evidenced by the official abstract of votes cast, that a recount is required for any office, ballot question, or ballot issue not included in section 1-10.5-102, the county clerk and recorder shall order a recount of the votes cast for the office, ballot question, or ballot issue. Any recount of the votes shall be completed no later than the thirtieth day after the election. A political subdivision that referred a ballot issue or ballot question to the electors may waive the automatic recount provisions of

this section if the ballot issue or ballot question fails by giving written notice to the county clerk and recorder within fourteen days after the primary election or eighteen days after any other election.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1. **L. 2001:** Entire section amended, p. 300, § 2, effective August 8. **L. 2002:** Entire section amended, p. 1639, § 29, effective June 7. **L. 2005:** Entire section amended, p. 1424, § 52, effective June 6; entire section amended, p. 1459, § 52, effective June 6.

Editor's note: This section was formerly numbered as 1-10-302.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 359-361.

C.J.S. See 29 C.J.S., Elections, § 385.

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

Determination by lot does not prevent election contest. The determination by lot by the canvassing board

of which candidate shall have the certificate of election where two candidates having the highest number of votes have an equal number is not such settlement of the matter as will prevent the defeated party from contesting the election on the ground that legal votes for him were not counted or that illegal votes were counted for his opponent. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

1-10.5-104. Recount for nonpartisan elections not coordinated by the county clerk and recorder. If it appears, as evidenced by the abstract of votes cast that a recount is required for any office, ballot question, or ballot issue, the designated election official shall order a recount of the votes cast for the office, the ballot issue, or ballot question no later than the twenty-fifth day after the election. Any recount under this section shall be completed no later than the fortieth day after the election.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1. **L. 2001:** Entire section amended, p. 301, § 3, effective August 8. **L. 2002:** Entire section amended, p. 1639, § 30, effective June 7.

Editor's note: This section was formerly numbered as 1-10-303.

1-10.5-105. Notice of recount. Notice prior to the recount shall be given to all candidates and, in the case of a ballot issue or ballot question, any petition representative identified pursuant to section 1-40-113, any governing body, or any agent of an issue committee, if such committee is required to report contributions to the secretary of state pursuant to the "Fair Campaign Practices Act", article 45 of this title, that are affected by the result of the election. Notice shall be given by certified mail and by telephone, facsimile transmission, or personal service.

Source: L. 99: Entire article added with relocations, p. 485, § 13, effective July 1.

1-10.5-106. Request for recount by interested party - definitions. (1) As used in this section, "interested party" means the candidate who lost the election, the political party or political organization of such candidate, any petition representative identified pursuant to section 1-40-113 for a ballot issue or ballot question that did not pass at the election, the governing body that referred a ballot question or ballot issue to the electorate if such ballot question or ballot issue did not pass at the election, or the agent of an issue committee that is required to report contributions pursuant to the "Fair Campaign Practices Act", article 45 of this title, that either supported a ballot question or ballot issue that did not pass at the election or opposed a ballot question or ballot issue that passed at the election.

(2) Whenever a recount is not required, an interested party may submit a notarized written request for a recount at the expense of the interested party making the request. This request shall be filed with the secretary of state, the county clerk and recorder, the designated election official, or other governing body that originally certified the candidate, ballot question, or ballot issue for the ballot within twenty days after a primary election and within twenty-four days after any other election. Such election official shall notify the political subdivision within which the election was held no later than the day

following receipt of the request. Before conducting the recount, the election official who will conduct the recount shall determine the cost of the recount within one day of receiving the request to recount, notify the interested party that requested the recount of the cost, and collect the costs of conducting the recount. If the request is filed with the secretary of state, the secretary of state shall determine the cost of the recount by adding the individual amounts determined by the political subdivisions conducting the recount. The interested party that requested the recount shall pay the cost of the recount by certified funds to the election official with whom the request for a recount was filed within one day of receiving the election official's cost determination. The funds shall be placed in escrow for payment of all expenses incurred in the recount. If after the recount the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required, the payment for expenses shall be refunded to the interested party that requested the recount. Any escrow amounts not refunded to the interested party that requested the recount shall be paid to the election officials who conducted the recount. Any recount of votes pursuant to this section shall be completed no later than the thirtieth day after the election.

Source: L. 99: Entire article added with relocations, p. 486, § 13, effective July 1. L. 2002: (2) amended, p. 1639, § 31, effective June 7. L. 2005: (2) amended, p. 1424, § 53, effective June 6; (2) amended, p. 1460, § 53, effective June 6.

Editor's note: This section was formerly numbered as 1-10-304 and 1-10-304.5.

1-10.5-107. Canvass board to conduct recount. (1) Any county clerk and recorder or governing body required to conduct a recount shall arrange to have the recount made by the canvass board who officiated in certifying the official abstract of votes cast. If any member of the canvass board cannot participate in the recount, another person shall be appointed in the manner provided by law for appointment of the members of the original board.

(2) Any canvass board making a recount under the provisions of this section may employ assistants and clerks as necessary for the conduct of the recount.

(3) The canvass board may require the production of any documentary evidence regarding any vote cast or counted and may correct the abstract of votes cast in accordance with its findings based on the evidence presented.

(4) At the conclusion of the recount, the canvass board shall make the returns of all partisan, nonpartisan, ballot issue, and ballot question elections to the designated election official and provide a copy to the persons or groups requesting the recount or notified of the recount pursuant to sections 1-10.5-105 and 1-10.5-106. The canvass board shall meet and issue an amended abstract of votes cast for the office, ballot issue, or ballot question that is the subject of the recount and deliver it to the designated election official.

(5) The designated election official shall notify the governing body of the results of the recount.

Source: L. 99: Entire article added with relocations, p. 487, § 13, effective July 1.

Editor's note: This section was formerly numbered as 1-10-305.

1-10.5-108. Method of recount. (Repealed)

Source: L. 99: Entire article added with relocations, p. 487, § 13, effective July 1. L. 2001: Entire section amended, p. 301, § 4, effective August 8. L. 2005: Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

Editor's note: This section was formerly numbered as 1-10-306.

1-10.5-109. Challenge of recount. (1) (a) Any interested party that requested a recount of a county, state, national, or district office of state concern or any party to such recount that has reasonable grounds to believe that the recount is not being conducted in a fair, impartial, and uniform manner may apply to the district court of the city and county of Denver for an order requiring the county clerk and recorder to stop the recount and to give the secretary of state access to all pertinent election records used in conducting the recount, and requiring the secretary of state to conduct the recount. The county clerk and recorder shall be an official observer during any recount conducted by the secretary of state.

(b) Any interested party that requested a recount of any other local office, ballot question, or ballot issue or any party to such recount that has reasonable grounds to believe that the designated election official is not conducting the recount in a fair, impartial, and uniform manner may apply to the district court for the political subdivision for an order requiring the designated election official to stop the recount and to give the appropriate official who will take over conducting the recount access to all pertinent election records, and requiring the appropriate official to conduct the recount. If the county clerk and recorder is not the designated election official, then the county clerk and recorder is the appropriate official to conduct the recount. If the county clerk and recorder is the designated election official, then the secretary of state is the appropriate official to conduct the recount. The designated election official shall be an official observer during any recount conducted pursuant to this subsection (1).

(2) All expenses incurred by the secretary of state in conducting a recount pursuant to subsection (1) of this section shall be paid from the state general fund. Expenses incurred prior to a court order requiring the secretary of state to conduct the recount shall be paid by the county or political subdivision conducting the recount.

Source: L. 99: Entire article added with relocations, p. 488, § 13, effective July 1.

Editor's note: This section was formerly numbered as 1-10-307.

1-10.5-110. Procedures for recount on direct recording electronic voting equipment. (Repealed)

Source: L. 2000: Entire section added, p. 1727, § 2, effective July 1. **L. 2004:** (1)(b), (3), and (4) amended, p. 1360, § 27, effective May 28. **L. 2005:** Entire section repealed, p. 1425, § 56, effective June 6; entire section repealed, p. 1461, § 56, effective June 6.

ARTICLE 11

Certificates of Election and Election Contests

Editor's note: This article was numbered as article 19 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980 and 1992, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1992; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

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1-11-201.	Causes of contest.	1-11-217.	Costs of election contest.
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PART 1

TIE VOTES AND CERTIFICATES OF ELECTION

1-11-101. Tie votes at partisan elections. (1) If at any general or congressional vacancy election, after all recounts have been completed, any two or more pairs of joint candidates for the offices of governor and lieutenant governor or if two or more candidates for the offices of secretary of state, state treasurer, or attorney general tie for the highest number of votes for the same office, one of the pairs or one of the individual candidates shall be chosen by the two houses of the general assembly on a joint ballot.

(2) If at any general or congressional vacancy election, after all recounts have been completed, any two or more persons tie for the highest number of votes for presidential electors, for United States senator, for representative in congress, for regent of the university of Colorado, for member of the state board of education, for state senator or state representative, or for district attorney, the secretary of state shall proceed to determine by lot which of the candidates shall be declared elected. Reasonable notice shall be given to the candidates of the time when the election will be determined.

(3) If at any primary election, after all recounts have been completed, any two or more candidates for an office other than a county office of the same political party tie for the highest number of votes for the same office, the tie shall be resolved in a manner agreed upon by the tying candidates. In case the candidates fail to agree on the method of resolution within five days after the canvass is complete, the tie shall be resolved by lot to be cast as the secretary of state may determine.

(4) If at any primary election involving a county office, after all recounts have been completed, two or more candidates of the same political party tie for the highest number of votes for the same office, the canvass board shall determine by lot the person who shall be elected. The canvass board shall provide the candidates affected by the tie vote reasonable notice of the time when the election will be determined.

Source: L. 92: Entire article R&RE, p. 783, § 14, effective January 1, 1993. L. 99: Entire section amended, p. 488, § 14, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

Cross references: For appointment of the original county board of canvassers, see § 1-10-101 (1)(a).

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 380.

1-11-102. Tie votes in nonpartisan elections. If any two or more candidates tie for the highest number of votes for the same office and if there are not enough offices remaining for all the candidates, the board of canvassers shall determine by lot the person who shall be elected. Reasonable notice shall be given to the candidates who are involved of the time when the election will be determined.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 380.

C.J.S. See 29 C.J.S., Elections, § 400.

Determination by lot does not prevent election contest. The determination by lot by the canvassing board of which candidate shall have the certificate of election where two candidates having the highest number of votes

have an equal number is not such settlement of the matter as will prevent the defeated party from contesting the election on the ground that legal votes for him were not counted or that illegal votes were counted for his opponent. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900) (decided under former law).

1-11-102.5. Ballot issue and ballot question - majority required. If any ballot issue or ballot question is approved by less than a majority of the votes cast, the issue or question shall be considered to have failed.

Source: L. 95: Entire section added, p. 845, § 71, effective July 1.

1-11-103. Certificates of election for nonpartisan, ballot issue, or ballot question elections. (1) Except in the case of offices for which a recount is required, immediately after the final abstract of votes cast for each office has been prepared and certified, the designated election official shall notify the candidates of their election to office. After any required bond and oath is filed, the designated election official shall make a formal certificate of election for each person who was elected and shall deliver the formal certificate to that person.

(2) Except in the case of ballot issues or ballot questions for which a recount is required, immediately after the abstract of votes cast for each ballot issue or ballot question has been prepared and certified, the designated election official shall notify the governing body of the political subdivision conducting the election and the petition representatives of a ballot issue or ballot question of the election result and shall make a certificate of the votes cast for and against each ballot issue and for and against each ballot question available for public inspection in the office of the designated election official for no less than ten days following the completion of the abstract of votes cast by the canvass board.

(3) The results of a special district election shall be certified to the division of local government within thirty days after the election as provided in section 32-1-104 (1), C.R.S. If an election is cancelled, the notice and a copy of the resolution of cancellation shall be filed with the division of local government.

Source: L. 92: Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 93:** Entire section amended, p. 1435, § 118, effective July 1. **L. 94:** Entire section amended, p. 1174, § 59, effective July 1. **L. 99:** (1) and (2) amended, p. 489, § 15, effective July 1; (3) amended, p. 452, § 10, effective August 4.

1-11-104. Certificates of election for county and precinct officers. Except in the case of offices for which a recount is required, immediately after the final abstract of votes cast for county and precinct officers has been prepared and certified, the county clerk and recorder shall make a certificate of

election, or a certificate of nomination in the case of a primary election, for each person declared to be elected or nominated to each office and shall deliver the certificates to that person.

Source: **L. 92:** Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 99:** Entire section amended, p. 489, § 16, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-10-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-9-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-105. Certificates of election for national, state, and district officers. Immediately after the final statewide abstract of votes cast has been prepared, the secretary of state shall make and transmit a certificate of election, certified under the secretary of state's seal of office, to each of the persons declared to be elected to national, state, and district offices of state concern and shall record in a book to be kept for that purpose each such certification. If the secretary of state is unable to certify the candidate elected to a state or district office of state concern, no such certification of election shall be transmitted by the secretary of state until the candidate elected has been determined.

Source: **L. 92:** Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1175, § 60, effective July 1. **L. 99:** Entire section amended, p. 490, § 17, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-106. Delivery of certified list of results. Upon the organization of the house of representatives, the secretary of state shall deliver to the speaker of the house a certified list of candidates elected to each state office and of each member elected to the general assembly showing the member's district. If the secretary of state is unable to certify the candidate elected to state office or the member elected to the general assembly from a particular district, the secretary of state shall also deliver a list of the state offices or districts for which no certification may be made. The speaker, upon receipt of the certified list and, if delivered, the list of offices and districts for which no certification may be made and before proceeding to other business, shall open and announce the results in the presence of a majority of the members of both houses of the general assembly, who shall assemble for that purpose in the chamber of the house of representatives. The person having the highest number of votes for any of the offices shall be declared duly elected by the presiding officer of the joint assembly. The two houses on joint ballot shall then resolve any tie votes which are on the certified list of results.

Source: **L. 92:** Entire article R&RE, p. 784, § 14, effective January 1, 1993. **L. 99:** Entire section amended, p. 490, § 18, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-107. Lists of presidential electors. The secretary of state shall prepare a certificate of election for each presidential elector who is elected at any general election. The governor shall sign and affix the seal of the state to the certificates and deliver one certificate to each elector on or before the thirty-fifth day after the general election.

Source: **L. 92:** Entire article R&RE, p. 785, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-10-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-9-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-108. Official abstract. (Repealed)

Source: **L. 92:** Entire article R&RE, p. 785, § 14, effective January 1, 1993. **L. 94:** (1)(a) amended, p. 1175, § 61, effective July 1. **L. 99:** Entire section repealed, p. 492, § 24, effective July 1.

PART 2

ELECTION CONTESTS

1-11-201. Causes of contest. (1) The election of any candidate to any office may be contested on any of the following grounds:

- (a) That the candidate elected is not eligible to hold the office for which elected;
- (b) That illegal votes were received or legal votes rejected at the polls in sufficient numbers to change the result of the election;
- (c) That an election judge or canvass board has made an error in counting or declaring the result of an election that changed the result of the election;
- (d) That an election judge, canvass board, or member of a canvass board has committed malconduct, fraud, or corruption that changed the result of the election; or
- (e) That, for any reason, another candidate was legally elected to the office.

(2) For the purpose of this part 2, if the election or nomination of either the governor or lieutenant governor is found to be invalid for any reason, the finding shall not in any way be construed to invalidate the election or nomination of the other joint candidate.

(3) The result of any election to determine a ballot issue or ballot question may be contested on any of the following grounds:

- (a) That illegal votes were received or legal votes were rejected at the polls in sufficient numbers to change the result of the election;
- (b) That an election judge or canvass board has made an error in counting or declaring the result of an election that changed the result of the election; or
- (c) That an election judge, canvass board, or member of a canvass board has committed misconduct, fraud, or corruption that changed the result of the election.

(4) In addition to the grounds set forth in subsection (3) of this section, the result of any election to determine a ballot issue that includes approval of the creation of any debt or other financial obligation may be contested if the notice required by section 1-7-908 is not provided in accordance with that section or contains any material misstatement of the information required to be set forth in the notice.

Source: **L. 92:** Entire article R&RE, p. 785, § 14, effective January 1, 1993. **L. 94:** (3) added, p. 1175, § 62, effective July 1. **L. 99:** (1)(c), (1)(d), (3)(b), and (3)(c) amended, p. 490, § 19, effective July 1. **L. 2003:** (4) added, p. 749, § 2, effective August 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-201 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-101 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For contests for county and nonpartisan officers, ballot issues, and ballot questions, see § 1-11-212; for contested elections, see C.R.C.P. 100.

ANNOTATION

- I. General Consideration.
- II. Causes of Contest.
 - A. In General.
 - B. Causes.

B. Causes.

Eligibility is to be determined at the date of qualifying. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

And the word "eligible" has reference to the capacity not of being elected to office, but of holding office. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

Thus it is wholly immaterial whether contestee is qualified at the time of election when at the time of taking office his eligibility exists. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

For the eligibility of a candidate to office is to be ascertained as of the time of his entering upon the duties of the office. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

An election will not be set aside for irregularities unless they affect the result of the election. People v. Keeling, 4 Colo. 129 (1878); Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888); Todd v. Stewart, 14 Colo. 286, 23 P. 426 (1890); Allen v. Glynn, 17 Colo. 338, 29 P. 670 (1892); Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893); People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908); Littlejohn v. People ex rel. Desch, 52 Colo. 217, 121 P. 159 (1911); City of Loveland v. Western Light & Power Co., 65 Colo. 55, 173 P. 717 (1918); Suttle v. Sullivan, 131 Colo. 519, 283 P.2d 636 (1955).

The causes for contest make no provision for a contest of an election upon the removal of a county seat, for the only election contests authorized are those of officers. Accordingly, it is also clear that there is no remedy by quo warranto, for that remedy is only employed to test the right of an officer or franchise. People v. Bd. of County Comm'rs, 6 Colo. 202 (1882).

Similarly, failure of election officials to issue absentee ballots upon oral application, although they had previously promised to do so, amounts to nothing as a ground of contest. Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951).

And an allegation that the name of the contestee was unlawfully printed upon the official ballot under the name and emblem of a political party of which he was not the nominee, that the filing of the certificate of nomination of contestee as the nominee of such political party was the result of a fraudulent conspiracy between contestee and the county clerk, and that by reason of having his name so printed under the name and emblem of the said political party he had counted for him a large number of votes to which he was not entitled, sufficient to reduce the number of his votes below the number cast for contestor, does not state a cause for contest under this section. Rather, it was contestor's duty to make his objection to the printing of contestee's name on the official ballot under the name and emblem to which he was not entitled in seasonable time and in the manner provided by the election law, and failing to do so, he cannot be heard

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, § 410.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Pursuant to the constitutional mandate of Colo. Const., art. VII, § 12, the procedure to be followed in election contests was enacted. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

II. CAUSES OF CONTEST.

A. In General.

In an election contest, the statement of contest must bring the case within one of the enumerated causes constituting grounds for contest. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

For, in an election contest, the contestor should be able to show some good reason for the contest. Todd v. Stewart, 14 Colo. 286, 23 P. 426 (1890); Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

And in the absence of some definite and specific assertion, a court will assume that there are none to be made. Todd v. Stewart, 14 Colo. 286, 23 P. 426 (1890); Smith v. Harris, 18 Colo. 274, 32 P. 616 (1893); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

Moreover, a statement of contest not vulnerable to demurrer (now dismissal for failure to state a claim) may be assailable on other grounds, e.g., that it is ambiguous, unintelligible, and uncertain. Collins v. Heath, 76 Colo. 600, 233 P. 838 (1925); Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

And contestors are without right to amend their statement of contest by supplying the very thing which was essential in the first instance to state a ground of contest and give the court jurisdiction. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

Causes of contest incorporated by reference. The causes of contest are, insofar as applicable,

incorporated by reference into provisions requiring a contestor of the election of county officers to file a written statement setting forth, among other things, the causes of the contest, and hence also into provisions relating to contests in special district elections. Jardon v. Meadowbrook-Fairview Metropolitan Dist., 190 Colo. 528, 549 P.2d 762 (1976).

after election to urge such objections when to uphold them would be to overthrow the expressed will of a majority of

the legal voters of the county. *Lewis v. Boynton*, 25 Colo. 486, 55 P. 732 (1898).

1-11-202. Who may contest election. The election of any candidate or the results of an election on any ballot issue or ballot question may be contested by any eligible elector of the political subdivision.

Source: **L. 92:** Entire article R&RE, p. 786, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1175, § 63, effective July 1.

Cross references: For causes of contest, see § 1-11-201; for election contests, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, §§ 435-441.

1-11-203. Contests arising out of primary elections. (1) All election contests arising out of a primary election, except contests for national or state offices, shall be summarily adjudicated by the district court sitting for the political subdivision within which a contest arises. The court which first acquires jurisdiction of any contest shall have original jurisdiction, subject to appellate review as provided by law and the Colorado appellate rules. In all cases involving contests for state offices, the supreme court shall take original jurisdiction for the purpose of summarily adjudicating any contest.

(2) Every contest shall be instituted by verified petition to the proper court, setting forth the grounds for the contest. The petition shall be filed and a copy served on the contestee within five days after the occurrence of the grounds of the contest. The contestee shall answer under oath within five days after service. If the petition cannot be personally served within the state on the contestee, service may be made by leaving a copy of the petition with the clerk of the court having original jurisdiction of the controversy or contest who shall search for the contestee so that an answer may be filed. Upon the expiration of the time for the answer, the court having jurisdiction of the contest shall forthwith set the matter for trial on the merits and shall summarily adjudicate it.

Source: **L. 92:** Entire article R&RE, p. 786, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-214 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-114 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

- I. General Consideration.
- II. Jurisdiction.
- III. Petition.
 - A. Sufficiency.
 - B. Service.

designee of a political party for nomination of that party to a particular office. *Anderson v. Kilmer*, 134 Colo. 270, 302 P.2d 185 (1956).

Summary adjudication of election contests.

Election contests shall be "summarily adjudicated" by the court, and strict adherence to procedural requirements is not the rule; as long as due process is afforded and a fair hearing is provided the contestants, the statutory

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision relating to contests arising subsequent to a primary election is not applicable to controversies over the right to appear on the ballot as a

requirements are deemed satisfied. *Ray v. Mickelson*, 196 Colo. 325, 584 P.2d 1215 (1978).

II. JURISDICTION.

Provision conflicts with U.S. Constitution as to jurisdiction over elections for U.S. Senate and House.

The provision which purports to vest the Colorado supreme court with jurisdiction to try election contests arising out of

a primary election for nomination to the United States Senate and House of Representatives conflicts with article I, section 5(1), of the United States Constitution, allowing each house to "be the judge of the elections, returns, and qualifications of its own member", and in such situation the United States Constitution must prevail: Inasmuch as the authority given Congress by article I, section 4(1), of the United States Constitution to regulate elections for senators and representatives includes the authority to regulate primary elections where, under the law of the state, they are an integral part of the procedure for the choice of representatives in Congress, and it logically follows as a corollary thereof that the provisions of section 5(1) also apply to primary elections for the U.S. Senate and House of Representatives. *Rogers v. Barnes*, 172 Colo. 550, 474 P.2d 610 (1970).

III. PETITION.

A. Sufficiency.

A nominee is under no duty to prove that he has been nominated. *People ex rel. Flebbe v. Mitchell*, 88 Colo. 102, 292 P. 228 (1930).

But on the contrary, the contesting party must allege sufficient specific facts so that the contestee may be advised with reasonable definiteness and certainty the character of the charges to be met and be thus afforded an opportunity to properly present a defense thereto. *People ex rel. Flebbe v. Mitchell*, 88 Colo. 102, 292 P. 228 (1930).

For, in election contest proceedings, courts cannot properly embark on a mere fishing expedition by opening ballot boxes when there is an utter lack of specific allegations as to the distribution of votes and no charge of

fraud or irregularity. *Cruse v. Richards*, 95 Colo. 485, 37 P.2d 382 (1934).

And it is always necessary to allege facts which will enable the court to determine that a different result would follow in the vote by reason of such alleged facts. *Cruse v. Richards*, 95 Colo. 485, 37 P.2d 382 (1934).

Hence, petition which does set out facts is insufficient. A petition in a primary election contest which merely charges a mistake in the counting of votes, and that a recount would result in the nomination of petitioner, without setting out the facts, is insufficient. *People ex rel. Flebbe v. Mitchell*, 88 Colo. 102, 292 P. 228 (1930).

B. Service.

One proposing to contest a nomination made by petition must follow the provision for contests arising out of primary elections. *McCall v. Pearce*, 53 Colo. 409, 127 P. 956 (1912).

Or else petitioner's rights may be foreclosed by laches. *McCall v. Pearce*, 53 Colo. 409, 127 P. 956 (1912).

Furthermore, service of summons in a primary election contest one day later than the time specified will not give the court jurisdiction, notwithstanding the last day upon which service could be made within the statutory time falls on Sunday. *Cruse v. Richards*, 95 Colo. 485, 37 P.2d 382 (1934).

And a contestee does not waive any objection to defective service of summons by filing a demurrer (now motion to dismiss for failure to state a claim) simultaneously with his motion to dismiss for want of service of process. *Cruse v. Richards*, 95 Colo. 485, 37 P.2d 382 (1934).

1-11-203.5. Contests concerning ballot order or ballot title - ballot issue or ballot question elections. (1) Except for petitions for rehearing pursuant to section 1-40-107, all election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form or content of any ballot title shall be summarily adjudicated by the district court sitting for the political subdivision within which the contest arises prior to the election. Except as otherwise provided in this section, the style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs shall be according to the rules and practice of the district court. The court that first acquires jurisdiction of any contest shall have exclusive jurisdiction. Before the district court is required to take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, running to the contestee and conditioned to pay all costs, including attorneys fees, in case of failure to maintain the contest. The judge shall determine the sufficiency of the bond and, if sufficient, approve it.

(2) Every such contest shall be commenced by verified petition filed by the contestor to the proper court, setting forth the grounds for the contest and a proposed alternative order for the ballot or alternative form or content for the contested ballot title. The contestee shall be the state in the case of a statewide ballot issue or statewide ballot question or the political subdivision that proposed to place the contested ballot issue or ballot question on the ballot, as applicable, and the petition representative of an initiated measure. The petition shall be filed and a copy served on the contestee within five days after the title of the ballot issue or ballot question is set by the state or political subdivision and for contests concerning the order of a ballot, within five days after the ballot order is set by the county clerk and recorder and not thereafter. The designated election official or other authorized official, on behalf of the contestee and the proponent of an initiated measure, shall answer under oath within five days after

service. Upon the expiration of the time for the answer, and following at least twenty-four hours advance notice of the date, time, and place of the adjudication given by the clerk of the court by letter, telephone, or fax to the contestor and contestee, the court having jurisdiction of the contest shall immediately set the matter for trial on the merits and shall adjudicate it within ten days of the date of filing of the answer by the contestee or expiration of the time for the answer.

(3) If the court finds that the order of the ballot or the form or content of the ballot title does not conform to the requirements of the state constitution and statutes, the court shall provide in its order the text of the corrected ballot title or the corrected order of the measures to be placed upon the ballot and shall award costs and reasonable attorneys fees to the contestor. If the court finds that the order of the ballot and the form and content of the ballot title conform to the requirements of the state constitution and statutes and further finds that the suit was frivolous as provided in article 17 of title 13, C.R.S., the court shall provide in its order an award of costs and reasonable attorneys fees to the contestee state or political subdivision and to the proponent of an initiated measure.

(4) Following entry of the order of the district court pursuant to this section, the ballot title shall be certified by the state or political subdivision to the county clerk and recorder, to be voted upon at the election as so certified unless the election on the ballot issue or ballot question is canceled in the manner provided by law. Notwithstanding any other provision of law, any appeal from an order of the district court entered pursuant to this section shall be taken directly to the supreme court, which shall decide the appeal as expeditiously as practicable.

(5) The procedure provided in this section shall be the exclusive procedure to contest or otherwise challenge the order of the ballot or the form or content of the ballot title.

(6) This section shall not apply to a ballot title for a statewide ballot issue or statewide ballot question that is set by a title setting board or court as provided by law.

Source: L. 94: Entire section added, p. 1175, § 64, effective July 1.

ANNOTATION

This section is constitutional and permissibly limits challenges based on the form and content of a ballot title but it cannot and does not time-bar constitutional challenges to the substance of a ballot issue or ballot question. This section does not conflict with art. X, § 20, of the Colorado Constitution because the requirements of that section that relate to ballot titles address only the form and content of ballot titles and not what that section substantively permits voters to approve. *Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).*

A challenge to a ballot title involves the substance of a ballot issue if it relates to the language in the ballot title itself and it would be legally impossible for the court hearing the challenge to reform or reword the ballot title to any constitutionally or statutorily acceptable level so that regardless of any contest filed before the election, the ballot issue as approved cannot be upheld under the laws or constitution of the state. *Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).*

A claim that a ballot issue proposed a "phased-in" tax increase and that a ballot title that disclosed only the first rather than the final full fiscal year dollar increase was, therefore, improper involved only the form and content of the ballot title, could be resolved by the type of summary adjudication contemplated by this section, and

was time-barred by this section because it was not made within five days of the setting of the ballot title. *Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).*

This section does not apply to a notice required by art. X, § 20, of the Colorado Constitution that accompanied a ballot title and, therefore, did not bar claims that such a notice contained inaccurate financial data and had a misleading purpose. Section 1-11-213 (4), however, did bar the claims. *Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).*

The final action of a local government legislative body to settle or decide the wording of a ballot title constitutes the setting or fixing of the ballot title under § 31-11-111. Under subsection (2), a person must, therefore, contest the form or content of a ballot title within five days of the legislative body's final action concerning the ballot title. *Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).*

The five-day time limit imposed by subsection (2) is constitutional because it is not "manifestly so limited as to amount to a denial of justice". *Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).*

Claim that a ballot issue was invalid because it contained multiple purposes is a challenge to the form or content of the ballot title. Consequently, the claim was time-barred because it was not filed within five days after the title of the ballot issue was set. *Busse v. City of Golden, 73 P.3d 660 (Colo. 2003).*

1-11-204. Contests for presidential elector. The supreme court has original jurisdiction for the adjudication of contests concerning presidential electors and shall prescribe rules for practice and proceedings for such contests. No justice of the court who is a contestor in the election contest shall be permitted to hear and determine the matter.

Source: L. 92: Entire article R&RE, p. 786, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-202 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 397-400, 404. **C.J.S.** See 29 C.J.S., Elections, § 401.

1-11-205. Contests for state officers. (1) Proceedings to contest the election of any person declared elected governor, lieutenant governor, secretary of state, state treasurer, attorney general, member of the state board of education, or regent of the university of Colorado may be commenced by filing with the secretary of the senate, between the sixth and tenth legislative days of the first session of the general assembly after the day of the election, a notice of intention to contest the election, specifying the particular grounds on which the contestor means to rely. The contestor shall file with the secretary of the senate a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The secretary of the senate shall determine the sufficiency of the bond, and, if it is sufficient, approve it.

(2) Upon the notice of intention being filed, and the bond being approved by the secretary of the senate, the general assembly shall determine by resolution on what day they will meet in joint session to take action in the contest.

(3) A certified copy of the notice filed by any contestor shall be served upon the contestee, together with a notice that the contestee is required to attend the joint session on the day fixed to answer the contest.

Source: L. 92: Entire article R&RE, p. 786, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-203 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 401.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Resolution that no person was elected may not be adopted. In a contest before the general assembly, the general assembly has no legal authority to adopt a resolution declaring that no person was elected and that a

vacancy exists in the office. In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905).

The provision for contesting the election of state officers does not contemplate giving any authority to the general assembly to decide anything more than the issues between the contestor and contestee and render judgment accordingly. In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905).

1-11-206. Evidence in contests for state officers. On the hearing of any election contest for any of the offices named in section 1-11-205, the parties to the contest may introduce written testimony,

taken in a manner prescribed by the joint session. No depositions shall be read in the hearing unless the opposite party had reasonable notice of the time and place of the taking of the deposition.

Source: L. 92: Entire article R&RE, p. 787, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-204 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 418-422.

C.J.S. See 29 C.J.S., Elections, § 466.

1-11-207. Rules for conducting contests for state officers. (1) In conducting any election contest for any of the offices named in section 1-11-205, the following rules apply:

(a) On the appointed day and hour, the general assembly, with its proper officers, shall convene in joint session.

(b) The president of the senate shall preside; but, when the president is the contestee, the president pro tempore of the senate shall preside.

(c) The parties to the contest shall then be called by the secretary of the senate. If they answer, their appearance shall be recorded.

(d) The testimony of the contestor shall be introduced first, followed by the testimony of the contestee. After the testimony has been presented on both sides, the contestor or contestor's counsel may open the argument, and the contestee or counsel may then proceed to make a defense, and the contestor may be heard in reply.

(e) After the arguments by the parties are completed, any member of the joint session may offer the reasons for the member's intended vote. The session may limit the time for argument and debate.

(f) The secretary of the senate shall keep a regular journal of the proceedings. The decision shall be taken by a call of the members, and a majority of all the votes given shall prevail.

Source: L. 92: Entire article R&RE, p. 787, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-205 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 391-396.

1-11-208. Contests for state senator or representative. (1) The election of any person as a state senator or a member of the state house of representatives may be contested by any eligible elector of the district to be represented by the senator or representative. Each house of the general assembly shall hear and determine election contests of its own members. In furtherance of resolving such a contest, the house of the general assembly before which any contest is to be tried shall certify questions pursuant to section 1-11-208.5 to the office of administrative courts for referral to an administrative law judge.

(2) The contestor, within ten days after the completion of the official abstract of votes cast, shall file in the office of the secretary of state a verified statement of intention to contest the election, setting forth the name of the contestor, that the contestor is an eligible elector of the district, the name of the contestee, the office being contested, the time of the election, and the particular grounds for the contest,

and shall serve a copy upon the contestee. The contestor shall file with the secretary of state a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The secretary of state shall determine the sufficiency of the bond, and, if it is sufficient, approve it.

(3) The contestee, within ten days after personal service of the statement, shall file in the office of the secretary of state an answer, duly verified, admitting or specifically denying each allegation and containing any new matter or counterstatement which the contestee believes may entitle him or her to retain the seat in the general assembly to which elected. The contestee shall serve a copy upon the contestor.

(4) When the answer of the contestee contains new matter constituting a counterstatement, the contestor, within ten days after the service of the answer, shall file in the office of the secretary of state a reply admitting or specifically denying under oath each allegation contained in the counterstatement, and shall serve a copy upon the contestee.

Source: **L. 92:** Entire article R&RE, p. 788, § 14, effective January 1, 1993. **L. 99:** (1) amended, p. 1384, § 2, effective June 4; (2) amended, p. 491, § 20, effective July 1. **L. 2005:** (1) amended, p. 852, § 5, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-206 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, § 401.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Authority of courts to determine election

controversies when no candidate declared duly elected. State constitutional provisions and statutes permitting general assembly to judge election of members does not limit subject matter jurisdiction of district court to hear controversies related to elections where no candidate is yet declared duly elected by secretary of state. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993).

1-11-208.5. Certification of questions to administrative law judge. (1) The house of the general assembly in which any contest for senator or representative, as applicable, is to be tried shall certify questions to the office of administrative courts for referral to an administrative law judge. The questions shall relate exclusively to the election returns in the district and the number of votes cast for each of the candidates for the contested seat. No question may be certified regarding the eligibility or qualification of any person for the contested office.

(2) Upon certification pursuant to subsection (1) of this section, the house of the general assembly in which the contest is to be tried shall transmit to the administrative law judge any papers submitted by the secretary of state pursuant to section 1-11-210 or any other documents submitted to that house in connection with the election contest.

(3) The administrative law judge shall have jurisdiction to make findings of fact on the questions certified by a house of the general assembly pursuant to subsection (1) of this section. Further evidence upon the points specified in such questions may be submitted by the contestor, the contestee, or both, in such contest. The administrative law judge may take and consider such additional evidence but shall limit its findings of fact to the questions certified.

(4) Any issues of law or findings of fact decided in a prior judicial proceeding that affect a party that contests an election for state senator or representative pursuant to section 1-11-208 shall not be conclusive upon an administrative law judge conducting fact finding or making recommendations pursuant to this section.

(5) The administrative law judge shall hold a hearing within twenty days after the date that questions were certified to the administrative law judge pursuant to subsection (1) of this section. The

administrative law judge's findings of fact and recommendations shall be completed not more than ten days after the date of the hearing. Such findings of fact and recommendations shall take precedence over all other business of the administrative law judge.

(6) (a) If the administrative law judge finds that, based on a preponderance of the evidence, an accurate and verifiable vote count can be determined in the contested district showing that a person had the highest number of votes cast in the district for the contested state senate or state house of representatives seat, the administrative law judge shall make recommendations to the house that certified the questions, including, but not limited to, that such person be seated as the senator or representative from the contested district.

(b) If the administrative law judge finds that, based on a preponderance of the evidence, irregularities in the votes cast or counted in the district for the contested state senate or state house of representatives seat both prevented an accurate and verifiable vote count and may have directly affected the outcome of the election, the administrative law judge shall make recommendations to the house that certified the questions, including, but not limited to, that such house further resolve the election contest or call a special legislative election pursuant to section 1-11-303.

(7) The administrative law judge shall transmit all the files and records of the proceedings to the presiding officer of the house in which the contest for senator or representative was filed.

(8) The administrative law judge's findings of fact and recommendations shall be final and not be subject to review by any other court.

(9) Upon receipt of such findings of fact and recommendations, the house in which the contest for senator or representative arose may take appropriate action, including, but not limited to:

(a) A trial of the election contest;

(b) Declaration of the duly elected member in the contested district in accordance with the findings of the administrative law judge; or

(c) Adoption of a resolution pursuant to section 1-11-302 calling for a special legislative election.

Source: L. 99: Entire section added, p. 1385, § 3, effective June 4. L. 2005: (1) amended, p. 853, § 6, effective June 1.

Editor's note: Section 77 of chapter 217, Session Laws of Colorado 2005, provides that amendments to subsection (1) are effective upon passage only if Senate Bill 05-185 is not enacted and does not become law. Senate Bill 05-185 was signed by the Governor on June 1, 2005; therefore, the amendments to subsection (1), as enacted in section 5 of House Bill 05-1337, will not take effect.

1-11-209. Depositions in contests for state senator or representative. (1) Either party, at the time the statement or answer is served, may serve upon the adverse party reasonable notice of taking depositions to be used at trial of the contest for state senator or state representative. Immediately after joining issue of fact, both parties shall proceed with all reasonable diligence to take any depositions they may desire to use at trial. Nothing in this subsection (1) shall abridge the right of either party to take depositions upon reasonable notice prior to the joining of issue in relation to any of the matters in controversy; but a failure to take depositions before the joining of issue shall not be held as laches against either party to the contest.

(2) If, upon the completion of taking any depositions, the adverse party has any witnesses present before the officer taking the depositions whose testimony the adverse party may wish to use in rebuttal of the depositions, the adverse party may proceed immediately to take the deposition of the rebutting witness before the officer, upon giving written notice to the other party or the other party's attorney. The officer shall attach to the depositions a copy of the notice with proof of service and shall return the rebuttal depositions in the same manner provided for returning depositions in chief. The party taking a deposition shall pay all costs of taking the deposition and its return.

(3) The time for taking depositions to be used at trial of the contest shall expire three days prior to the meeting of the next general assembly. Both parties may take depositions at the same time, but neither party shall take depositions at more than one place at the same time. Nothing in this subsection (3) shall be construed to abridge the right of either house of the general assembly, upon good cause shown, to extend the time to take depositions, or to send for and examine any witness, or to take any testimony it may desire to use on trial of the contest, or to order a recount of the ballots if there has been an error in surveying the returns in any county or precinct.

(4) Any county or district judge of or for a county in the judicial district where a contested election case arises may issue subpoenas, compel the attendance of witnesses, take depositions, and certify depositions according to the rules of the district court.

(5) The officer before whom the depositions are taken, upon the completion thereof, shall certify the depositions immediately, shall enclose the depositions, and the notices for taking the depositions, and the proofs of service of the notices in an envelope, and shall seal and transmit the envelope by mail or in person by a sworn officer, to the secretary of state, with an endorsement showing the nature of the papers, the names of the contesting parties, and the house of the general assembly before which the contest is to be tried.

Source: L. 92: Entire article R&RE, p. 789, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-207 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-108 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For depositions, see C.R.C.P. 26 to 37; for causes of contest, see § 1-11-201; for venue, see C.R.C.P. 98 and Crim. P. 18; for contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 409-427. **C.J.S.** See 29 C.J.S., Elections, § 401.

1-11-210. Secretary of state to transmit papers in contests for state senator or representative. The secretary of state shall deliver the sealed envelope containing depositions, notices, and proofs of service, together with the statement of contestor, answer of contestee, and reply, to the presiding officer of the body in which the contest for senator or representative is to be tried, immediately upon the organization of the body or as soon thereafter as documents are received. The presiding officer, immediately upon receiving the documents, shall give notice to the body that the papers are in the officer's possession.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-208 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-109 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-11-211. Contests for district attorneys. The district court of the judicial district in which the contest for the office of district attorney arises has jurisdiction for the adjudication of contests for the office of district attorney. No district judge who is a contestor in any election contest shall be permitted to hear and determine the matter. In that case, the supreme court shall appoint a district judge to hear and decide the contest.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-209 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For venue, see C.R.C.P. 98 and Crim. P. 18; for contested elections, see C.R.C.P. 100.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390. **C.J.S.** See 29 C.J.S., Elections, § 401.

1-11-212. Contests for county and nonpartisan officers - ballot issues and ballot questions. Contested election cases of county and nonpartisan officers and ballot issues and ballot questions shall be tried and decided by the district court for the county in which the contest arises. If a political subdivision is located in more than one county, the district court of either county may take jurisdiction.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1177, § 65, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-210(1) as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-110(1) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For contested elections, see C.R.C.P. 100.

ANNOTATION

- I. General Consideration.
- II. Election May be Contested.
- III. Bond Required.
- IV. Statement of Contest.
 - A. Filing.
 - B. Requisites of Statement.
- V. Answer.

- VI. Reception of Illegal Votes or Rejection of Legal Votes.
- VII. Reply to Counterstatement.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

C.J.S. See 29 C.J.S., Elections, § 401.

Law reviews. For comment on Porter v. Johnson appearing below, see 2 Rocky Mt. L. Rev. 1311 (1930).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for contesting the election of county officers is not only special in character, but

furnishes a complete system of procedure within itself. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890);

Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

The provision for contesting the election of county officers lists the pleadings and time within which they are to be filed. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

And such system is exclusive. Lewis v. Boynton, 25 Colo. 486, 55 P. 732 (1898).

II. ELECTION MAY BE CONTESTED.

Scope of contest. Contests of the election of any person declared duly elected to any county office, except the office of county judge, are governed by this section. Schwarz v. County Court, 14 Colo. 44, 23 P. 84 (1890); Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897); Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

And election contest over the office of county judge comes under Rule 100, C.R.C.P. Boger v. Smith, 77 Colo. 475, 238 P. 57 (1925).

The judge sitting in term time in his regular capacity as the court for the county is invested with jurisdiction to try and determine contested election cases of county officers. Vailes v. Brown, 16 Colo. 462, 27 P. 495 (1891); Gunson v. Baldauf, 88 Colo. 436, 297 P. 516 (1931).

But whether a judge sitting in vacation may exercise such jurisdiction not determined. Vailes v. Brown, 16 Colo. 462, 27 P. 945 (1891).

A contest proceeding is initiated by the filing of a bond and a statement of contest. *Gunson v. Baldauf*, 88 Colo. 436, 297 P. 516 (1931).

III. BOND REQUIRED.

The bond for costs is for the benefit of the contestee. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

And whether it be given or not in the first instance does not affect the jurisdiction of the court. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

So contestee must object. If no bond for costs be given when the action is commenced, or if the one accepted be insufficient, it is incumbent upon the contestee, to object at the earliest opportunity. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

Otherwise, he will waive his rights in this respect. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

The cost bond should not be in any specified penalty, but should be conditioned for the payment of all costs. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

But the contestee cannot object to the bond because a penalty is specified, in the absence of a showing that the penalty fixed is insufficient to cover the probable costs which he may incur in the case. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

Attorney's fees are not included in "all costs". *Amaya v. Dist. Court*, 197 Colo. 129, 590 P.2d 506 (1979).

IV. STATEMENT OF CONTEST.

A. Filing.

The contest must be filed within 10 days after the date when the votes are canvassed. *Vigil v. Garcia*, 36 Colo. 430, 87 P. 543 (1906).

And this means all the votes. *Vigil v. Garcia*, 36 Colo. 430, 87 P. 543 (1906).

However, it does not mean a sufficient number to show that one or the other of the parties was elected. *Vigil v. Garcia*, 36 Colo. 430, 87 P. 543 (1906).

But it means the votes of the entire county. *Vigil v. Garcia*, 36 Colo. 430, 87 P. 543 (1906).

And if for any reason one or more precincts are not canvassed at the time of the first sitting of the board, the statute will not commence to run until those precincts are canvassed, even though the returns from those precincts, when counted, will not affect the result as between candidates for any single office. *Vigil v. Garcia*, 36 Colo. 430, 87 P. 543 (1906).

Moreover, the contest provision is to be construed as a statute of limitations upon a summary proceeding. *Vailes v. Brown*, 16 Colo. 462, 27 P. 945, 14 L.R.A. 120 (1891).

Whose time limit may not be enlarged. A statutory provision requiring notice of contest to be given within a given time from either the date of the official count, the declaration of the result, or the issuing of the certificate of election, etc., is peremptory, and the time

cannot be enlarged. *Vailes v. Brown*, 16 Colo. 462, 27 P. 945 (1891).

And there is the strongest reason for enforcing this rule most rigidly in cases of contested elections, because promptness in commencing and prosecuting the proceedings is of the utmost importance to the end that a decision may be reached before the term has wholly, or in great part, expired. *Vailes v. Brown*, 16 Colo. 462, 27 P. 945 (1891).

Furthermore, time cannot be extended on ground that last day falls on Sunday. When the statutory period for filing the statement of an election contest for county officers under this section has fully elapsed, excluding the day when the votes are canvassed, the time cannot be extended merely on the ground that the last day happens to fall on Sunday. This is the reasonable as well as the natural and literal interpretation of the section. *Vailes v. Brown*, 16 Colo. 462, 27 P. 945 (1891).

Although it is clear that the first day must be excluded, for the contestor is given 10 days after the day when the votes are canvassed to file his statement. *Vailes v. Brown*, 16 Colo. 462, 27 P. 945 (1891).

B. Requisites of Statement.

There must be reasonable definiteness in statements of election contests. *Suttle v. Sullivan*, 131 Colo. 519, 283 P.2d 636 (1955).

A statement of contest which contains the averments and matters required by statute is sufficient to state a cause of action and sufficiently alleges the qualifications of the contestor to hold the office. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

Hence, statement must include the particular cause of the contest. A contest proceeding is initiated by the filing of a statement of contest, the contents of which must conform to this section, and include the particular cause or causes of the contest. *Gunson v. Baldauf*, 88 Colo. 436, 297 P. 516 (1931).

Causes of contest incorporated by reference. The causes of contest are, insofar as applicable, incorporated by reference into the provision requiring a contestor of the election of county officers to file a written statement setting forth, among other things, the causes of the contest, and hence also into the provision relating to contests in special district elections. *Jardon v. Meadowbrook-Fairview Metro. Dist.*, 190 Colo. 528, 549 P.2d 762 (1976).

Where the statement does not allege facts showing that the irregularities complained of changed the result of the election, the statement does not state a cause of action. *Suttle v. Sullivan*, 131 Colo. 519, 283 P.2d 636 (1955).

Statement of contestor that he is "an elector of the county" is a material averment and must be proved if denied by the answer or the contest as such must fail. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890).

Nor is the contestor excused from producing evidence in support of such averment on the ground that other competent evidence is refused. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890).

Statement may be amended as to proper name of contestee. Where there was an admitted mistake in naming the contestee in an election contest, a trial court errs in denying contestor's motion to amend the statement of contest. *Graham v. Swift*, 123 Colo. 309, 228 P.2d 969 (1951).

V. ANSWER.

If contestee desires to controvert the truth of the matters averred in the statement of contest, he must do so by filing an answer in the time prescribed. *Lewis v. Boynton*, 25 Colo. 486, 55 P. 732 (1898).

And contestee cannot avail himself of a demurrer (now motion to dismiss for failure to state a claim) for the purpose for which it is ordinarily used. *Lewis v. Boynton*, 25 Colo. 486, 55 P. 732 (1898).

But if he elects to interpose such a demurrer (now motion to dismiss), it must be regarded as the equivalent of an answer admitting the truth of the matters averred, in which case it is unnecessary to introduce evidence in support of the allegations of the statement of contest. *Lewis v. Boynton*, 25 Colo. 486, 55 P. 732 (1898).

VI. RECEPTION OF ILLEGAL VOTES OR REJECTION OF LEGAL VOTES.

Although a slight ambiguity exists, the evident purpose of including the list of disputed votes is to require each party to give the other notice of the names of such persons as he claims illegally voted for his competitor and of those whose votes for himself were illegally rejected. *Schwarz v. County Court*, 14 Colo. 44, 23 P. 84 (1890).

This provision is mandatory. The provision that, where the reception of illegal votes is the ground of contest, a list of the persons alleged to have voted illegally must be set forth in the statement of contest is mandatory. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914); *Israel v. Wood*, 98 Colo. 495, 56 P.2d 1324 (1936); *Graham v. Swift*, 123 Colo. 309, 228 P.2d 969 (1951).

And it must be strictly construed. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914).

Moreover, the provisions of the rules of civil procedure have no application. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914).

Consequently, in order to give the court jurisdiction, the contest statement must contain the required list. *Schwarz v. County Court*, 14 Colo. 44, 23 P. 84 (1890); *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914).

And an amendment to the statement to include the name of the voters is not permissible. *Town of Sugar City v. Bd. of Comm'rs*, 57 Colo. 432, 140 P. 809 (1914); *Kay v. Strobeck*, 81 Colo. 144, 254 P. 150 (1927).

Also, the omission to furnish the required list of names cannot be justified by subsequently alleging that the information necessary to prepare the same was in

the hands of contestee by whose fraud and violence contestor was prevented from obtaining it when no effort was made in the first instance to either comply with the section or to excuse the failure. *Schwarz v. County Court*, 14 Colo. 44, 23 P. 84 (1890).

Hence, there is no error in the refusal of the court to declare a vote illegal where the voter's name was not set forth in the statement of contest. *Kay v. Strobeck*, 81 Colo. 144, 254 P. 150 (1927).

List concerning absentee voters held not to meet requirements. Where exhibit incorporated into statement of contest contained a long list of names of persons applying for and voting absentee ballots, but there was nothing in the list to indicate how many persons therein named were not legally qualified residents of the county, or who were not qualified by reason of mental or physical incompetence, or who had subscribed to an oath before a person unauthorized to administer the same, the statement of contest failed to meet the requirements for supplying a list of disputed votes. *Graham v. Swift*, 123 Colo. 309, 228 P.2d 969 (1951).

However, list not required where no "rejection" or "reception" of votes. In an election contest where the contestor alleged that two legal ballots had been rejected after they had been placed in the box, the polls had closed, and the ballots had been counted and canvassed, the ground of contest was not the "rejection" of legal votes or the "reception" of illegal votes, and the contestor was not required to set forth in his statement of contest a list of the number of persons who "so voted" or "offered to vote". *Waggoner v. Barela*, 123 Colo. 436, 230 P.2d 586 (1951).

And a vote is rejected when an elector offers to vote and is not permitted to cast a ballot; the rejected vote is a vote that is not cast - one that did not reach the ballot box. *Waggoner v. Barela*, 123 Colo. 436, 230 P.2d 586 (1951).

But if an elector is permitted to cast a ballot and to deposit it in the ballot box, the vote is accepted and must be counted unless it is attacked upon the other ground named in the statute, to wit, "the reception of illegal" votes, in which event the contest provision requires a list of the names of the persons who "so voted", that is, who voted illegally, to be set out in the statement of contest. *Waggoner v. Barela*, 123 Colo. 436, 230 P.2d 586 (1951).

For the term "so voted" refers to alleged illegal votes in the ballot box. *Waggoner v. Barela*, 123 Colo. 436, 230 P.2d 586 (1951).

While the term "or offered to vote" refers to electors, the rejected votes of whom were not cast or placed in the ballot box. *Waggoner v. Barela*, 123 Colo. 436, 230 P.2d 586 (1951).

Notwithstanding, illegal votes, whether challenged or not, may be considered in an election contest. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

As there is no statutory requirement that contested votes must be votes which are challenged at the polling place. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

However, where contestor alleges that an ineligible voter's ballot was received and counted for contestee, the burden is on the contestor to prove this necessary allegation contained in his statement of contest. Porter v. Johnson, 85 Colo. 440, 276 P. 333 (1929).

VII. REPLY TO COUNTERSTATEMENT.

Contestor's assertion of counterstatement's failure to state a claim does not deprive contestee's right to proof. In view of the specific denial of the charges made

in the statement of contest, the counterstatement of contest filed by contestee, and the requirement that judgment be pronounced, it would be unreasonable to hold that the contestor's demurrer (now motion to dismiss for failure to state a claim) under such circumstances would deprive the contestee of the right to demand proof of the charges made by the contestor and to introduce testimony in support of his counterstatement of contest, inasmuch as such a ruling would deny the contestee his day in court. Gunson v. Baldauf, 88 Colo. 436, 297 P. 516 (1931).

1-11-212.5. Contests concerning bond elections. Except as otherwise provided in this part 2, the result of an election on a ballot issue seeking approval to create any debt or other financial obligation may be contested based on the grounds set forth in section 1-11-201 (4) in the manner provided by this part 2 for contesting the result of any other election.

Source: L. 2003: Entire section added, p. 749, § 3, effective August 6.

1-11-213. Rules for conducting contests in district court. (1) The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution shall be according to the rules and practice of the district court.

(2) Change of venue may be taken from any district court for any cause in which changes of venue might be taken in civil or criminal actions. The decisions of any district court are subject to appellate review as provided by law and the Colorado appellate rules.

(3) Before the district court is required to take jurisdiction of the contest, the contestor shall file with the clerk of the court a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The judge shall determine the sufficiency of the bond and, if it is sufficient, approve it.

(4) The contestor, within ten days after the official survey of returns has been filed with the designated election official, shall file in the office of the clerk of the district court a written statement of the intention to contest the election, setting forth the name of the contestor, that the contestor is an eligible elector of the political subdivision, the name of the contestee, the office or ballot issue or ballot question being contested, the time of the election, and the particular grounds for the contest. The statement shall be verified upon information and belief by the affidavit of the contestor or of an eligible elector of the political subdivision. If the contest is based upon a ballot issue or ballot question, the political subdivision or subdivisions for which the ballot issue or ballot question was decided shall be named as a contestee. If a written statement of intent to contest the election is filed more than ten days after the completion of the official survey of returns, no court shall have jurisdiction over the contest.

(5) The clerk of the district court shall then issue a summons in the ordinary form, in which the contestor shall be named as plaintiff and the contestee as defendant, stating the court to which the action is being brought, the political subdivision for which the contest is filed, and a brief statement of the grounds for contest as set forth in the contestor's statement. The summons shall be served upon the contestee and political subdivision in the same manner as other district court summonses are served in this state, within ten days after the statement of intention is filed.

(6) The contestee, within ten days after the service of the summons, shall file an answer with the clerk of court, which admits or specifically denies each allegation of the statement and asserts any counterstatement on which the contestee relies as entitling him or her to the office to which elected.

(7) If a contestor alleges the reception of illegal votes or the rejection of legal votes as the grounds for the contest, a list of the eligible electors who so voted or offered to vote shall be set forth in the statement of the contestor and likewise in the answer of contestee if the same grounds are alleged in the counterstatement.

(8) When the answer of the contestee contains a new matter constituting a counterstatement, within ten days after the answer is filed, the contestor shall file a reply with the clerk of court admitting or specifically denying, under oath, each allegation contained in the counterstatement.

Source: L. 92: Entire article R&RE, p. 790, § 14, effective January 1, 1993. L. 94: (4) and (5) amended, p. 1177, § 66, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-210 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-110 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Timing requirement for an election contest not met by a lawsuit for injunctive relief filed prior to the election. The phrase "within ten days after" imposes two sequential conditions on an election contest: (1) "[A]fter" certification of election results, and (2) "within" 10 days. Neither condition was met. *Taxpayers Against Congestion v. Reg'l Transp. Dist.*, 140 P.3d 343 (Colo. App. 2006).

Subsection (4) barred claims that a notice required by art. X, § 20, of the Colorado Constitution that accompanied a ballot title contained inaccurate financial

data and had a misleading purpose, because the claims did not involve the legality or constitutionality of the ballot issue's substance but instead concerned only the means by which election results were obtained. *Cacioppo v. Eagle County Sch. Dist.* RE-50J, 92 P.3d 453 (Colo. 2004).

Subsection (6) mandates factual specificity. Where the cause of a contest in an action challenging a school bond issue is that illegal votes have been received, subsection (6) mandates factual specificity. *Abts v. Bd. of Educ.*, 622 P.2d 518 (Colo. 1980).

1-11-214. Trial and appeals in contests for county and nonpartisan elections. (1) Immediately after the issue is joined, the district judge shall set the date for trial, which shall be not more than twenty days nor less than ten days after the issue was joined. The trial shall take precedence over all other business of the court. Any depositions to be used in the trial may be taken upon four days' notice before any officer authorized to take depositions. The testimony at trial may be made orally or by depositions. The district judge shall cause the testimony to be taken in full and filed in the cause. The trial shall be conducted according to district court rules and practice.

(2) An appeal from the judgment may be taken to the supreme court, in the same manner as other cases tried in the district court. The appeal shall be filed, the bill of exceptions settled, the bond for costs executed and filed, and the record transmitted to the clerk of the supreme court within twenty days from the date the judgment is entered. The supreme court shall advance the case to the head of the calendar and shall hear and determine the matter with all reasonable dispatch.

Source: L. 92: Entire article R&RE, p. 792, § 14, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-11-211 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-10-111 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For depositions, see C.R.C.P. 26 to 37; for trial of contested elections, see C.R.C.P. 100.

ANNOTATION

- I. General Consideration.
- II. Trial.
- III. Appeal.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. TRIAL.

Purpose of fixing day for trial. This section requiring a judge, in an election contest case, to fix a day for trial not more than twenty days after the issue is joined is for the purpose of enabling a speedy trial and is for the benefit of both parties. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

But this requirement may be waived by both parties consenting to fixing the date of trial at a later date. *Nicholls v. Barrick*, 27 Colo. 432, 62 P. 202 (1900).

However, there is no specific provision for a change of the place of trial. *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

Nor is there a provision for an application for calling in another judge to try the case upon the ground of prejudice or partiality of the presiding judge. *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

And so, in the absence of any such authority, the rules of civil procedure should be followed. *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

Under the rules, a party has not the absolute right to have his cause tried by a judge other than the regularly elected and presiding judge of the court on the

alleged ground of the latter's prejudice. The matter lies in the sound discretion of the judge to whom the application is made, and his decision is not reviewable unless an abuse of discretion is shown. *Doll v. Stewart*, 30 Colo. 320, 70 P. 326 (1902); *People ex rel. Lindsley v. District Court*, 30 Colo. 488, 71 P. 388 (1903); *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

Furthermore, an election contest may be tried notwithstanding a change of judges after its commencement, though the successor must conduct the trial de novo. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890); *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

And by the words "other cases" must be understood ordinary civil actions. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890).

But it is not "according to the rules and practice" in the trial of ordinary civil actions for one judge to hear the evidence, or a part thereof, orally, and

then for another judge to render a finding and judgment upon such evidence, however perfectly the same may have been preserved. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890).

The object of requiring testimony to be preserved is for convenient reference afterwards, or for use on appeal, or as a deposition in case a second trial should be had when witnesses should have died or removed from the county. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890).

Where an election contest is dismissed by contestant, over the objection of the contestee, after answer and replication are filed, such dismissal is not a bar to another contest depending on the same facts. *Freas v. Engelbrecht*, 3 Colo. 377 (1877); *Hallack v. Loft*, 19 Colo. 74, 34 P. 568 (1893); *Martin v. McCarthy*, 3 Colo. App. 37, 32 P. 551 (1893); *Denver & R. G. R. v. Iles*, 25 Colo. 19, 53 P. 222 (1898); *Bd. of Comm'rs v. Schradsky*, 31 Colo. 178, 71 P. 1104 (1903); *Vigil v. Garcia*, 36 Colo. 430, 87 P. 543 (1906).

III. APPEAL.

Limitation upon appeals not repealed by provision for review. Provision that writs of error (now writs on appeal) to any inferior tribunal shall be the only method for review by the supreme court of any action or proceeding, and repealing all statutes providing any other method or procedure for review, did not repeal the 20-day limitation upon appeals of election contest decisions. *Sitler v. Brians*, 126 Colo. 370, 251 P.2d 319 (1952).

Hence, the attempted review of an action to contest election not docketed in the supreme court within 20 days from the date of judgment is not sought in apt time and a motion to dismiss should be granted. *Sitler v. Brians*, 126 Colo. 370, 251 P.2d 319 (1952).

Moreover, an application to advance a cause to the head of the calendar in the supreme court will not be considered until the abstract and all the briefs have been filed in accordance with the rule of court and the case is ready for submission. *Dickinson v. Freed*, 24 Colo. 483, 52 P. 209 (1898).

And objections of contestor not presented by the verified statement of contest cannot be considered on review. *Israel v. Wood*, 98 Colo. 495, 56 P.2d 1324 (1936).

When dismissal judgment must be affirmed. If the dismissal of an election contest is proper upon any ground, whether or not the trial court relied thereon, the judgment must be affirmed. *Graham v. Swift*, 123 Colo. 309, 228 P.2d 969 (1951).

And the reason assigned by the trial court may in itself be insufficient to warrant the judgment, but if upon other grounds the judgment is correct, it will not be reversed because of faulty reasoning. *Graham v. Swift*, 123 Colo. 309, 228 P.2d 969 (1951).

Thus if a statement of contest is insufficient to justify further proceedings, then the judgment of the court

dismissing the action should be affirmed, notwithstanding the fact that no motion was presented in the trial court challenging the sufficiency of said statement and no

specification of points with relation thereto appears in the record. *Graham v. Swift*, 123 Colo. 309, 228 P.2d 969 (1951).

1-11-215. Recount in contests for county and nonpartisan elections. If, at trial of any election contest as provided in section 1-11-214 and this section, the statement or counterstatement alleges an error in the abstract of votes cast sufficient to change the result, the district judge has the power to order a recount of the ballots cast or the votes tabulated in the precincts in which the alleged error was made. The court may also require the production before it of witnesses, documents, records, and other evidence as may have or contain information regarding the legality of any vote cast or counted for either of the contesting candidates or a ballot issue or ballot question, or concerning the correct number of votes cast for a candidate or a ballot issue or ballot question. The court may order the returns corrected in accordance with the evidence presented and the court's findings.

Source: **L. 92:** Entire article R&RE, p. 792, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1178, § 67, effective July 1. **L. 99:** Entire section amended, p. 491, § 21, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-212 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-112 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 381-390.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Contestor has no absolute and unqualified right to have ballot boxes opened and a recount of ballots. *Gray v. Huntley*, 77 Colo. 478, 238 P. 53 (1925); *Kindel v. Le Bert*, 23 Colo. 385, 48 P. 641 (1897); *Boger v. Smith*, 77 Colo. 475, 238 P. 57 (1925).

Rather, before such an order can be properly made, there must be some preliminary evidence supporting the alleged charges. *Kindel v. Le Bert*, 23

Colo. 385, 48 P. 641 (1897); *Gray v. Huntley*, 77 Colo. 478, 238 P. 53 (1925).

And then the matter is within the sound legal discretion of the trial court. *Kindel v. Le Bert*, 23 Colo. 385, 48 P. 641, 58 Am. St. R. 234 (1897); *Gray v. Huntley*, 77 Colo. 478, 238 P. 53 (1925); *Harper v. City of Pueblo*, 109 Colo. 411, 126 P.2d 339 (1942).

In addition, the exercise of such discretion, when within the limits of the constitution and statutes, is final on review when wisely exercised. *Gray v. Huntley*, 77 Colo. 478, 238 P. 53 (1925); *Winters v. Pacheco*, 88 Colo. 105, 292 P. 1061 (1930).

Ballot boxes should not be ordered open until some positive proof is offered to show that the election returns are not justified by the ballots in the ballot boxes. *Winters v. Pacheco*, 88 Colo. 105, 292 P. 1061 (1930).

And definite allegations of fraud or allegations that a recount will change the result, and a prima facie showing thereof, are essential for a recount. *Kindel v. Le Bert*, 23 Colo. 385, 48 P. 641 (1897); *Harper v. City of Pueblo*, 109 Colo. 411, 126 P.2d 339 (1942).

For, in the absence of a definite and specific assertion, no recount is allowed. *Harper v. City of Pueblo*, 109 Colo. 411, 126 P.2d 339 (1942).

But when this preliminary proof is offered, it would be a gross abuse of discretion for a court to deny contestor the right to substantiate his cause by documentary evidence. *Winters v. Pacheco*, 88 Colo. 105, 292 P. 1061 (1930).

And since the ballot itself is the best evidence, with all other secondary, it is idle to require witnesses to testify as to the illegibility of a ballot which can be produced and thereby refute or confirm their statements with reference to it. *Winters v. Pacheco*, 88 Colo. 105, 292 P. 1061 (1930).

Thus, where two witnesses testified that they had seen a questioned ballot and that it was absolutely illegible, this was sufficient proof to justify an order of court for the opening of the ballot box and production of the ballot where the result of the election depended on such. *Winters v. Pacheco*, 88 Colo. 105, 292 P. 1061 (1930).

Also, comparison of ballots with the poll lists is allowed in connection with evidence. Upon the production of evidence tending to show error, mistake, fraud, malconduct, or corruption on the part of the election board, or any of its members, in the matter of receiving, numbering, depositing, or canvassing the ballots, or other illegal or irregular conduct in respect thereto, an inspection and comparison of the ballots with the poll lists should be allowed in connection with the oral evidence in reference thereto. *Clanton v. Ryan*, 14 Colo. 419, 24 P. 258 (1890).

Charge in answer sufficient to entitle contestor to recount as matter of course. Where the answer charged that the boxes had been tampered with and had not been preserved by the county clerk in the manner provided by

law, the contestor assumed the burden of proving that they had not been tampered with or molested, that they were in the same condition as when received by the clerk, and under the issues as made by the pleadings, the contestor

was entitled to a recount of these ballots as a matter of course. *Wiley v. McDowell*, 55 Colo. 236, 133 P. 757 (1913).

1-11-216. Judgment in contests for county and nonpartisan elections. The district court shall pronounce judgment on whether the contestee or any other person was legally elected to the contested office or on whether the ballot issue or ballot question was enacted. The court's judgment declaring a person elected entitles that person to take office when the term of office begins, upon proper qualification. If the judgment is against a contestee who has received a certificate, the judgment annuls the certificate. If the court finds that no person was legally elected, the judgment shall set aside the election and declare a vacancy in the office contested.

Source: L. 92: Entire article R&RE, p. 792, § 14, effective January 1, 1993. L. 94: Entire section amended, p. 1178, § 68, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-11-213 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-10-113 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 432.

C.J.S. See 29 C.J.S., Elections, § 401.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Court cannot after lapse of term suspend execution of judgment. *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

And even during the term at which an election contest is determined, the court has no power to suspend execution of a judgment which awards the office to the contestor. *Nordloh v. Packard*, 45 Colo. 515, 101 P. 787 (1909).

1-11-216.5. Judgment in election contests - creation of financial obligation. The district court shall pronounce judgment on whether the approval of a ballot issue to create any debt or other financial obligation should be set aside based on the grounds set forth in section 1-11-201 (4).

Source: L. 2003: Entire section added, p. 749, § 3, effective August 6.

1-11-217. Costs of election contest. (1) A judgment against the contestor pursuant to the provisions of sections 1-11-211 and 1-11-212, concerning election of a candidate or determination of a ballot question, shall provide that the contestor is liable for all fees incurred in the contested election by all contestees, including reasonable costs and attorney fees.

(2) A judgment against the contestor pursuant to the provisions of sections 1-11-211 and 1-11-212, concerning the determination of a ballot issue, or pursuant to section 1-11-212.5, concerning the determination of a ballot issue that includes approval of the creation of any debt or other financial obligation, shall provide that the contestor is liable for all fees incurred in the contested election by all contestees, including reasonable costs and attorneys fees, but a judgment for costs and fees shall be awarded in favor of the state or a political subdivision only if the suit is ruled frivolous, as provided in article 17 of title 13, C.R.S.

Source: L. 92: Entire article R&RE, p. 793, § 14, effective January 1, 1993. L. 94: Entire section amended, p. 1178, § 69, effective July 1. L. 2003: (2) amended, p. 750, § 4, effective August 6.

1-11-218. Violations by the governing body. (1) If the results of any county or nonpartisan election are disallowed as the result of a proceeding held pursuant to sections 1-11-211 and 1-11-212, the elector who instituted the proceedings may commence a civil action to recover costs and reasonable attorney fees from the governing body.

(2) If the result of any election approving the creation of any debt or other financial obligation is set aside as the result of a proceeding held pursuant to this part 2, the elector who instituted the proceeding may commence a civil action to recover costs and reasonable attorney fees from the governing body.

Source: L. 92: Entire article R&RE, p. 793, § 14, effective January 1, 1993. **L. 94:** Entire section amended, p. 1179, § 70, effective July 1. **L. 2003:** Entire section amended, p. 750, § 5, effective August 6.

PART 3

SPECIAL LEGISLATIVE ELECTION PROCEDURE - MEMBERS OF THE GENERAL ASSEMBLY

1-11-301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 10 of article V of the Colorado constitution provides that each house of the general assembly shall judge the election and qualification of its members;

(b) Section 11 of article VII of the Colorado constitution authorizes the general assembly to pass laws to secure the purity of elections;

(c) In furtherance of these constitutional provisions and the plenary power of the general assembly, the general assembly may enact laws to enable a house of the general assembly to call a special legislative election in the event such house is unable to declare a person duly elected in a district as a member of the state senate or the state house of representatives because an accurate and verifiable vote count showing that the person has the highest number of votes cast in such district cannot be obtained from the general election returns.

Source: L. 99: Entire part added, p. 1386, § 4, effective June 4.

1-11-302. Causes of special legislative election. (1) The state senate or the state house of representatives, acting by resolution, may call a special legislative election for a state senate or house of representatives district following the 2000 general election and any general election thereafter pursuant to this part 3 if:

(a) The election of any person as a member of the state senate or the state house of representatives is contested pursuant to section 1-11-208; and

(b) A committee on credentials, a committee of reference, or an administrative law judge pursuant to section 1-11-208.5 recommends a special legislative election.

(2) Such resolution shall direct the secretary of state to give notice to the county clerk and recorder of each county in which such district is located to call a special legislative election for the entire district pursuant to section 1-11-303. Such resolution shall further specify that the candidates at such election shall, subject to the withdrawal of a candidate pursuant to section 1-11-306, be the same as the candidates on the ballot in such district for the state senate or the state house of representatives seat at the preceding general election from which the election contest arises.

Source: L. 99: Entire part added, p. 1387, § 4, effective June 4.

1-11-303. Call for special legislative election. (1) Within three days after receipt of a resolution calling for a special legislative election pursuant to section 1-11-302, the secretary of state shall make and deliver or transmit to the county clerk and recorder of each county in which the district

for the contested state senate or house of representatives seat is located a written notice calling a special legislative election in said district. The secretary of state shall further specify the name and party of each candidate and the district number of the contested state senate or house of representatives seat. Except as otherwise provided in section 1-11-306, candidates shall be the same as the candidates on the ballot in such district for the state senate or house of representatives at the preceding general election from which the contest was filed pursuant to section 1-11-208.

(2) A special legislative election called pursuant to this section shall be held in the entire district for the contested state senate or state house of representatives seat and no precinct or precincts in the district may be excluded from such election.

Source: L. 99: Entire part added, p. 1387, § 4, effective June 4.

1-11-304. Date of election. Within three days after receipt of the secretary of state's notice pursuant to section 1-11-303, the county clerk and recorder or coordinated election official shall set a date for the special legislative election that is not less than forty-five days nor more than sixty days from the date of such receipt.

Source: L. 99: Entire part added, p. 1387, § 4, effective June 4.

1-11-305. Notice of special legislative election. The county clerk and recorder shall give notice of the special legislative election pursuant to section 1-5-206.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-306. Withdrawal from special legislative election. A candidate on the ballot at the special legislative election may withdraw his or her candidacy at any time after the notice of special legislative election given under section 1-11-305. The special legislative election shall be called and held notwithstanding such withdrawal; except that, if, at the close of business on the tenth day before such election, there is not more than one candidate on the ballot by reason of such withdrawal, the designated election official shall cancel the election and declare the candidate elected. Notice of such cancellation shall be made as provided in section 1-5-208 (6).

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-307. Conduct of special legislative election. The special legislative election shall be conducted according to the provisions of articles 1 to 13 of this title.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-308. Mail-in ballots. The appropriate designated election officials shall make available applications for mail-in ballots no later than twenty-four hours after the date for the special legislative election is set. Mail-in ballots shall be available no later than thirty days before the special legislative election. All other provisions of article 8 of this title shall apply to the mail-in ballot process.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4. **L. 2007:** Entire section amended, p. 1796, § 63, effective June 1.

1-11-309. Early voting. Early voting for a special legislative election shall be made available pursuant to section 1-8-202.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-310. Survey of returns. (1) The board of canvassers for a special legislative election shall be organized as provided in section 1-10-101.

(2) The county clerk and recorder shall contact the secretary of state on election night with the unofficial count.

(3) The board of canvassers for a special legislative election shall commence a survey of the returns on the day following such election.

(4) The certified survey of returns shall be sent by certified mail or hand delivered to the secretary of state no later than the close of business on the fifth day after the special legislative election.

(5) Upon receipt of the certified survey of returns, the secretary of state shall issue a certificate of election to the candidate who received the highest number of votes and shall transmit a copy of the certificate to the appropriate house of the general assembly.

Source: L. 99: Entire part added, p. 1388, § 4, effective June 4.

1-11-311. Special legislative elections subject to "Fair Campaign Practices Act". Special legislative elections conducted in accordance with this part 3 are subject to the appropriate sections of article 45 of this title.

Source: L. 99: Entire part added, p. 1389, § 4, effective June 4.

Source: L. 92: Entire article R&RE, p. 793, § 15, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6;
63 Am. Jur.2d, Public Officers and Employees, §§ 127-
131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132.

1-12-102. Limitations. (1) No recall petition shall be circulated or filed against any elected officer until the officer has actually held office for at least six months following the last election; except that a recall petition may be filed against any member of the general assembly at any time after the fifth day following the convening and organizing of the general assembly after the election.

(2) After one recall petition and election, no further petition may be filed against the same state or county officer during the term for which the officer was elected, unless the petitioners signing the petition equal fifty percent of the votes cast at the last preceding general election for all of the candidates for the office held by the officer.

(3) After one recall petition and election, no further petition shall be filed against the same nonpartisan officer during the term for which the officer was elected, unless the petitioners signing the petition equal one and one-half times the number of signatures required on the first petition filed against the same officer, until one year has elapsed from the date of the previous recall election.

(4) No recall petition shall be circulated or filed against any elected officer whose term of office will expire within six months.

Source: L. 92: Entire article R&RE, p. 793, § 15, effective January 1, 1993. **L. 97:** (4) added, p. 1061, § 1, effective May 27.

Cross references: For the power of the county central committee to fill vacancies, see § 1-3-104.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers
and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132.

1-12-103. Petition for recall. Eligible electors of a political subdivision may initiate the recall of an elected official by signing a petition which demands the election of a successor to the officer named in the petition. The petition shall contain a general statement, consisting of two hundred words or less, stating the ground or grounds on which the recall is sought. The statement is for the information of the electors who shall be the sole and exclusive judges of the legality, reasonableness, and sufficiency of the ground or grounds assigned for the recall. The ground or grounds shall not be open to review.

Source: L. 92: Entire article R&RE, p. 794, § 15, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers
and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public
Employees, §§ 151-158.

1-12-104. Signatures required for state and county officers. (1) A petition to recall a state or county officer shall be signed by eligible electors equal in number to twenty-five percent of the entire vote cast at the last preceding general election for all candidates for the office which the incumbent sought to be recalled occupies.

(2) If more than one person is required by law to be elected to fill the office to which the person sought to be recalled is an incumbent, then the petition shall be signed by eligible electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent of the entire vote cast at the last preceding general election for all candidates for the office to which the

incumbent sought to be recalled was elected, the entire vote being divided by the number of all officers elected to the office at the last preceding general election.

Source: **L. 92:** Entire article R&RE, p. 794, § 15, effective January 1, 1993. **L. 97:** (1) amended, p. 1061, § 2, effective May 27.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

1-12-105. Signatures required for school district officers. A petition to recall a school district officer shall be signed by eligible electors of the school district equal in number to at least forty percent of those electors who voted in such district in the last preceding election at which the director to be recalled was elected as indicated by the pollbook or abstract for such election. If no such election was held, such petition shall be signed by eligible electors of the school district equal in number to at least ten percent of those electors residing within the school district on the date that the form of the petition is approved under section 1-12-108 (4). In no case shall the number required for recall be less than ten percent of eligible electors qualified to vote in the most recent biennial school election; except that no more than fifteen thousand signatures shall be required.

Source: **L. 92:** Entire article R&RE, p. 794, § 15, effective January 1, 1993. **L. 97:** Entire section amended, p. 1061, § 3, effective May 27.

Cross references: For the determination of existence of vacancy in county offices, see § 30-10-105.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

Where a county clerk-elect died before

qualification, a vacancy in the office occurred on the expiration of the term of the then incumbent, to be filled by appointment of the county commissioners. *Gibbs v. People ex rel. Watts*, 66 Colo. 414, 182 P. 894 (1919) (decided under former law).

1-12-106. Signatures required for nonpartisan officers. A petition to recall any other nonpartisan officer shall be signed by three hundred eligible electors of the political subdivision who are entitled to vote for a successor to the incumbent sought to be recalled or forty percent of the eligible electors of the political subdivision at the time the form of the petition is approved under section 1-12-108 (4), whichever number is less.

Source: **L. 92:** Entire article R&RE, p. 794, § 15, effective January 1, 1993. **L. 97:** Entire section amended, p. 1062, § 4, effective May 27.

1-12-107. Designated election officials. (1) For state recall elections, the petition shall be filed with the secretary of state who shall certify the sufficiency of the petition to the governor who shall set the date for the election. The election shall be conducted by the appropriate county clerk and recorder in the manner provided in this article for state elections.

(2) For county recall elections, the petition shall be filed with the county clerk and recorder who shall certify the sufficiency of the petition and call and conduct the election.

(3) For school board recall elections, the petition shall be filed with the county clerk and recorder in which the school district's administrative offices are located. The clerk and recorder of the county shall certify the sufficiency of the petition and call and conduct the election.

(4) For all other nonpartisan elections, the petition shall be filed with the district court in the county in which the political subdivision was organized. The court shall then appoint a designated election official to certify the sufficiency of the petition and call and conduct the election.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 151-158.

1-12-108. Petition requirements. (1) The petition shall be prepared and circulated pursuant to this part 1. No signature shall be counted that was placed on a petition prior to approval of the petition by the designated election official or more than sixty days after the designated election official's approval of the petition.

(2) (a) The petition for the recall of an elected official may consist of one or more sheets, to be fastened together in the form of one petition section, but each sheet shall contain the same heading and each petition section shall contain one sworn affidavit of the circulator. No petition shall contain the name of more than one person proposed to be recalled from office.

(b) The petition for recall may be circulated and signed in sections, and each section shall contain a full and accurate copy of the title and text of the petition. Each petition shall designate, by name and address, three persons, referred to in this section as the "committee", that shall represent the signers in all matters affecting the petition.

(3) (a) The signatures to a recall petition need not all be appended to one paper, but no petition shall be legal that does not contain the requisite number of names of eligible electors whose names do not appear on any other petition previously filed for the recall of the same person under the provisions of this section.

(b) At the top of each page shall be printed, in bold-faced type, the following:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to knowingly sign the petition when not a registered elector.

Do not sign this petition unless you are an eligible elector. To be an eligible elector you must be registered to vote and eligible to vote in (name of political subdivision) elections.

Do not sign this petition unless you have read or have had read to you the proposed recall measure in its entirety and understand its meaning.

(c) Directly following the warning in paragraph (b) of this subsection (3) shall be printed in bold-faced type the following:

Petition to recall (name of person sought to be recalled) from the office of (title of office).

(4) No petition shall be circulated until it has been approved as meeting the requirements of this subsection (4) as to form. The official with whom the petitions are to be filed pursuant to section 1-12-107 shall approve or disapprove a petition as to form by the close of the second business day following

submission of the proposed petition. The official shall mail written notice of the action taken to the person who submitted the petition and to the officer whom the petition seeks to recall on the day the action is taken.

(5) (a) Every petition shall be signed only by eligible electors.

(b) Unless physically unable, all electors shall sign their own signature and shall print their names, respective residence addresses, including the street number and name, the city or town, the county, and the date of signature. Each signature on a petition shall be made, to the extent possible, in black ink.

(c) Any person, except a circulator, may assist an elector who is physically unable to sign the petition in completing the information on the petition as required by law. On the petition immediately following the name of the disabled elector, the person providing assistance shall both sign and state that the assistance was given to the disabled elector.

(6) (a) No person shall circulate a recall petition unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age.

(b) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include: The affiant's printed name, the address at which the affiant resides, including the street name and number, the city or town, the county, and the date of signature; a statement that the affiant was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; a statement that the affiant circulated the section of the petition; a statement that each signature on the petition section is the signature of the person whose name it purports to be; a statement that to the best of the affiant's knowledge and belief each of the persons signing the petition section was, at the time of signing, an eligible elector; and a statement that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing the signer to sign the petition.

(c) The designated election official shall not accept for filing any section of a petition that does not have attached to it the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed is invalid.

(7) (Deleted by amendment, L. 97, p. 1062, § 5, effective May 27, 1997.)

(7.5) The petition may be filed at any time during the sixty-day period after the designated election official's approval of the petition form as specified in subsection (1) of this section. The committee shall file all sections of a petition simultaneously, and any section of a petition submitted after the petition is filed shall be invalid and of no force and effect.

(8) (a) Upon filing, the designated election official for the political subdivision shall review all petition information and verify the information against the registration records, and, where applicable, the county assessor's records. The secretary of state shall establish guidelines for verifying petition entries.

(b) Any disassembly of a section of the petition prior to filing that has the effect of separating the affidavits from the signatures shall render that section of the petition invalid and of no force and effect.

(c) After review, and no later than ten working days after the initial filing of the petition, the designated election official shall notify the committee and the incumbent of the number of valid signatures and whether the petition appears to be sufficient or insufficient. Upon determining that the petition is sufficient and after the time for protest has passed, the designated election official shall certify the recall question to the ballot and, if the election is a coordinated election, notify the coordinated election official.

(9) (a) A recall petition that has been verified by the designated election official shall be held to be sufficient unless a protest in writing under oath is filed in the office of the designated election official by an eligible elector within fifteen days after the designated election official has determined the

sufficiency or insufficiency of the petition under paragraph (c) of subsection (8) of this section. The petition shall set forth specific grounds for the protest. Grounds include but are not limited to failure of any portion of a petition or circulator affidavit to meet the requirements of this article or any conduct on the part of petition circulators that substantially misleads persons signing the petition. The designated election official shall forthwith mail a copy of the protest to the committee named in the petition as representing the signers, together with a notice fixing a time for hearing the protest not less than five nor more than ten days after the notice is mailed. Every hearing shall be before the designated election official with whom the protest is filed or before a district judge sitting in that county if the designated election official is the subject of the recall. The testimony in every hearing shall be under oath. The hearing shall be summary and not subject to delay and shall be concluded within thirty days after the petition is filed, and the result shall be forthwith certified to the committee.

(b) The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence. The decision upon matters of substance is open to review, if prompt application is made, as provided in section 1-1-113. The remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any judicial proceeding in a summary way.

(c) A petition for recall may be amended once at any time within sixty days from the date the petition form was approved by the designated election official under subsection (4) of this section.

(d) (I) Any signer may request that his or her name be stricken from the petition at any time within the sixty-day period prior to the date the petition is deemed sufficient and the time for protest has passed by filing a written request that his or her signature be stricken with the designated election official and delivering a copy of such request to at least one member of the committee. If such request is delivered to the member of the committee or the election official through the United States mails, it shall be deemed delivered to the committee or the election official on the date shown by the cancellation mark on the envelope containing the request received by the member or the election official. If the request is delivered to the member of the committee or the election official in any other manner, it shall be deemed delivered to the committee or the election official on the date of delivery and stamped receipt by the election official.

(II) If the designated election official receives a written request filed in accordance with this paragraph (d) after the petition is filed but before the petition is deemed sufficient and the time for protest has passed, the election official shall strike the signature of the signer who filed the request. If the election official receives such a written request before the petition is filed, the election official shall strike the signature of the signer who filed the request promptly upon the filing of the petition.

(10) Any person who willfully destroys, defaces, mutilates, or suppresses a petition, or who willfully neglects to file or delays delivery of a petition, or who conceals or removes a petition from the possession of the person authorized by law to have custody of it, or who aids, counsels, procures, or assists any person in doing any of the above acts is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: **L. 92:** Entire article R&RE, p. 795, § 15, effective January 1, 1993. **L. 93:** Entire section amended, p. 1435, § 119, effective July 1. **L. 95:** Entire section amended, p. 845, § 72, effective July 1. **L. 97:** (4), (7), (8)(c), (9)(a), and (9)(c) amended and (7.5) added, p. 1062, § 5, effective May 27. **L. 99:** (9)(c) amended and (9)(d) added, p. 95, § 1, effective September 1. **L. 2001:** (2)(a) amended, p. 1004, § 14, effective August 8. **L. 2002:** (7.5) amended, p. 1640, § 32, effective June 7. **L. 2007:** (6)(a) and (6)(b) amended, p. 1981, § 32, effective August 3.

Editor's note: Subsections (6)(a) and (6)(b) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am. Jur.2d. See 63 Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 149, 151-158.

One appointed to fill the vacant and unexpired term of a public office holds precisely as his predecessor would have done had the vacancy not occurred. People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909) (decided under former law).

And one elected to a public office has a contingent or inchoate right which becomes absolute

upon qualification. No one else can enter into the office during the term for which another is elected, until the officer elected is ousted, or his right terminated, which can never occur until the day appointed by law for the enforcement of his term. If at that date he has failed to qualify, the office is vacant. People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909) (decided under former law).

1-12-109. Resignation. If an officer whose recall is sought offers a resignation it shall be accepted and the vacancy caused by the resignation shall be filled as provided by law. The person appointed to fill the vacancy caused by the resignation shall hold the office only until the person elected at the recall election is qualified.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993.

1-12-110. Call for election. (1) If the officer whose recall is sought does not resign within five days after the sufficiency of the recall petition has been sustained, the designated election official shall make notice by publication for the holding of a recall election, and the officers charged by law with election duties shall make necessary arrangements for the conduct of the election. The election shall be conducted pursuant to the provisions of this title.

(2) If the officer whose recall is sought resigns at any time after the filing of the certification of election question for the ballot, the recall election shall be called and held notwithstanding the resignation.

Source: L. 92: Entire article R&RE, p. 795, § 15, effective January 1, 1993. **L. 95:** (1) amended, p. 849, § 73, effective July 1.

1-12-111. Date of election. If the recall petition is held to be sufficient under section 1-12-108 (8) (c) and after the time for protest has passed, the officer with whom the recall petition was filed, without delay, shall submit the petition, together with a certificate of its sufficiency, to the appropriate governing body. The governing body shall set a date for the recall election not less than forty-five nor more than seventy-five days from the date of determination of sufficiency; however, if a general election is to be held within ninety days after the determination of sufficiency, the recall election shall be held as a part of the general election.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. **L. 97:** Entire section amended, p. 1063, § 6, effective May 27.

1-12-112. Ballots. (1) In addition to all other requirements of law, the official ballot shall contain a statement consisting of two hundred words or less stating the reasons set forth in the petition for demanding the officer's recall. The officer sought to be recalled may submit a statement of justification of the officer's course in conduct in three hundred words or less to the designated election official. The officer shall submit any such statement no later than ten working days after the date of issuance of the certificate of sufficiency by the designated election official. The official ballot shall contain such statement of justification if submitted pursuant to this subsection (1).

(2) Ballots for the election of a successor to the officer sought to be recalled shall contain the candidates' names which shall be placed on the ballot by lot, regardless of the method of nomination.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. **L. 97:** (1) amended, p. 1063, § 7, effective May 27.

1-12-113. Conduct of election. The recall election and election of a successor shall be conducted according to the provisions of articles 1 to 13 of this title.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993.

1-12-114. Mail-in ballots. Applications for mail-in ballots shall be made available by the appropriate designated election officials no later than twenty-four hours after the date for the recall election is set. Mail-in ballots shall be available no later than thirty days before the recall election. All other provisions of article 8 of this title shall apply to the mail-in ballot process.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. L. 95: Entire section amended, p. 849, § 74, effective July 1. L. 2007: Entire section amended, p. 1796, § 64, effective June 1.

1-12-115. Write-in candidates. No write-in vote for any office shall be counted unless an affidavit of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office if elected. The affidavit of intent shall be filed with the designated election official not later than the date required for filing nominating petitions pursuant to section 1-12-117.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993. L. 95: Entire section amended, p. 849, § 75, effective July 1.

1-12-116. Sufficiency of the recall. If a majority of those voting on the question of the recall of any incumbent from office vote "no", the incumbent shall continue in office; if a majority vote "yes", the incumbent shall be removed from office upon the qualification of the successor.

Source: L. 92: Entire article R&RE, p. 796, § 15, effective January 1, 1993.

1-12-117. Nomination of successor. A candidate to succeed the officer sought to be recalled shall meet the qualifications of a party candidate or an unaffiliated candidate as provided in part 8 of article 4 of this title and shall be nominated by a political party petition or an unaffiliated petition as provided in part 9 of article 4 of this title. Nomination petitions and affidavits of intent to run as a write-in candidate shall be filed no later than fifteen days after the date on which the appropriate governing body convenes and sets the election date. Every petition shall be signed by the number of eligible electors required for the office in part 8 of article 4 of this title or as otherwise provided by law. The name of the officer who was sought to be recalled shall not be eligible as a candidate in the election to fill any vacancy resulting from the recall election.

Source: L. 92: Entire article R&RE, p. 797, § 15, effective January 1, 1993. L. 94: Entire section amended, p. 1179, § 71, effective July 1. L. 95: Entire section amended, pp. 849, 862, §§ 76, 123, effective July 1. L. 97: Entire section amended, p. 1064, § 8, effective May 27.

Editor's note: Amendments to this section by sections 76 and 123 of House Bill 95-1241 were harmonized.

1-12-118. Election of successor. (1) The election of a successor shall be held at the same time as the recall election. The names of those persons nominated as candidates to succeed the person sought to be recalled shall appear on the ballot; but, no vote cast shall be counted for any candidate for the office unless the voter also voted for or against the recall of the person sought to be recalled. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for office.

(2) (Deleted by amendment, L. 95, p. 850, § 77, effective July 1, 1995.)

Source: L. 92: Entire article R&RE, p. 797, § 15, effective January 1, 1993. L. 95: Entire section amended, p. 850, § 77, effective July 1.

1-12-119. Canvass of votes. (1) For the recall of a partisan officer, the canvass board shall be composed of one representative from each major political party and the county clerk and recorder. For the recall of a nonpartisan officer, the canvass board shall be composed of the designated election official, one member of the governing body, and one eligible elector of the political subdivision.

(2) The canvass board shall complete an abstract of votes cast no later than the day following the recall election. For state elections, the canvass board shall contact the secretary of state on election night with the unofficial count. For county and all other elections, the canvass board shall provide the governing body with the unofficial count at the opening of business hours on the day following the recall election.

(3) The certified abstract of votes cast shall be sent by certified mail or hand delivered to the secretary of state for state elections and to the governing body for county and all other elections no later than the close of business on the fifth day after the recall election.

(4) If the majority of those voting on the recall question voted "yes", upon receipt of the certified abstract of votes cast, the designated election official shall issue a certificate of election to the successor candidate who received the highest number of votes. A copy of the certificate shall be transmitted by the secretary of state to the appropriate house of the general assembly for recall elections concerning the general assembly and to the governor for the recall of all other elections of state officers. For all other recall elections, a copy of the certificate shall be transmitted to the governing body of the political subdivision.

Source: L. 92: Entire article R&RE, p. 797, § 15, effective January 1, 1993. **L. 95:** (3) and (4) amended, p. 850, § 78, effective July 1. **L. 99:** Entire section amended, p. 491, § 22, effective July 1.

1-12-120. Cost of recall election. (1) If at any recall election for a state office the incumbent whose recall is sought is not recalled, the incumbent shall be repaid from the state treasury any money authorized by this article which the incumbent actually expended as an expense of the recall election. In no event shall the sum repaid be greater than an amount equal to ten cents per voter. The general assembly shall provide an appropriation for state recall elections.

(2) If at any recall election for a county or local government office the incumbent whose recall is sought is not recalled, the governing body shall authorize a resolution for repayment from the general fund of the political subdivision any money authorized to be repaid to the incumbent by this article which the incumbent actually expended as an expense of the election. In no event shall the sum repaid exceed forty cents per eligible elector as defined in section 1-1-104 (16), subject to a maximum repayment of ten thousand dollars.

(3) Authorized expenses shall include, but are not limited to, moneys spent in challenging the sufficiency of the recall petition and in presenting to the electors the official position of the incumbent, including campaign literature, advertising, and maintaining campaign headquarters.

(4) Unauthorized expenses shall include, but are not limited to: Moneys spent on challenges and court actions not pertaining to the sufficiency of the recall petition; personal expenses for meals; lodging and mileage for the incumbent; costs of maintaining a campaign staff and associated expenses; reimbursement for expenses incurred by a campaign committee which has solicited contributions; reimbursement of any kind for employees in the incumbent's office; and all expenses incurred prior to the filing of the recall petition.

(5) The incumbent shall file a complete and detailed request for reimbursement within sixty days after the date of the recall election with the governing body of the political subdivision holding the recall election, who shall then review the reimbursement request for appropriateness under subsection (2) of this section and shall refer the request, with recommendations, to the general assembly at its next general session for state recall elections or to the treasurer of the governing body for all other elections within thirty days after receipt of the request for reimbursement.

Source: L. 92: Entire article R&RE, p. 798, § 15, effective January 1, 1993. **L. 97:** (2) amended, p. 1064, § 9, effective May 27.

1-12-121. Special provisions. (1) If the governor is sought to be recalled under the provisions of this article by recall petition filed in the office of the secretary of state, the duties imposed upon the governor by this article and article XXI of the state constitution as to that recall petition shall be performed by the lieutenant governor. If the secretary of state is sought to be recalled under the provisions of this article by recall petition filed in the office of the secretary of state, the duties imposed upon the secretary of state by this article and article XXI of the state constitution as to that recall petition shall be performed by the state auditor.

(2) If the recall of any other elected or appointed officer is sought who is charged with responsibilities under this article, the governing body shall appoint another officer to perform such duties.

Source: L. 92: Entire article R&RE, p. 799, § 15, effective January 1, 1993.

1-12-122. Recalls subject to "Fair Campaign Practices Act". Recall elections are subject to the appropriate sections of article 45 of this title.

Source: L. 95: Entire section added, p. 850, § 79, effective July 1.

1-12-123. Constitutional requirements for recall of state officers. To the extent that the provisions of this part 1 concerning the recall of state officers conflict with the provisions of article XXI of the state constitution, the provisions of article XXI of the state constitution shall control.

Source: L. 97: Entire section added, p. 1064, § 10, effective May 27.

PART 2

VACANCIES IN OFFICE

1-12-201. Vacancies in office of United States senator. (1) When a vacancy occurs in the office of United States senator from this state, the governor shall make a temporary appointment to fill the vacancy until it is filled by election.

(2) When a vacancy occurs, the governor shall direct the secretary of state to include in the general election notice for the next general election a notice of the filling of the vacancy. The secretary of state shall give notice accordingly. At the election, the vacancy shall be filled for the unexpired term. If, for any reason, no United States senator is elected at the next general election, the person temporarily appointed by the governor shall hold the office until a United States senator is elected at a succeeding general election.

Source: L. 92: Entire article R&RE, p. 799, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-101 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-102 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 29 C.J.S., Elections, §§ 3, 132, 134.

1-12-202. Vacancies in office of representative in congress. When any vacancy occurs in the office of representative in congress from this state, the governor shall set a day to hold a congressional vacancy election to fill the vacancy and cause notice of the election to be given as required in part 2 of article 5 of this title; but congressional vacancy elections shall not be held within the ninety-day period preceding a general election.

Source: L. 92: Entire article R&RE, p. 800, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-102 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-101 (1) as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For registration for congressional vacancy elections, see § 1-2-210; for power of the county central committee to fill vacancies, see § 1-3-104.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131. **C.J.S.** See 29 C.J.S., Elections, §§ 3, 132, 134.

1-12-203. Vacancies in general assembly. (1) In the event of a vacancy in the general assembly caused by the death or resignation of a member who has been sworn into office or caused by the death or resignation of a member who has been elected to a seat but who has not yet been sworn into office, the vacancy shall be filled by the appropriate vacancy committee, if any, as provided in section 1-3-103 (1) (d), of the same political party and of the same representative or senatorial district represented by the former member whose seat is vacant. If the member was affiliated with a minor political party, then the vacancy shall be filled by the vacancy committee designated in the constitution or bylaws of the minor political party. If the member was unaffiliated with a political party, then the vacancy shall be filled by the vacancy committee designated on the petition for nomination pursuant to section 1-4-802 (1) (e). The vacancy shall be filled until the next general election after the vacancy occurs, when the vacancy shall be filled by election.

(2) No vacancy committee may select a person to fill a vacancy at a meeting held pursuant to this section unless a written notice announcing the time and location of the vacancy committee meeting was mailed to each of the committee members at least six days prior to such meeting by the chairperson of the central committee which selected the members. Mailing of the notice is effective when the notice is properly addressed and deposited in the United States mail, with first-class postage prepaid.

(3) The vacancy committee, by a majority vote of its members present and voting at a meeting called for that purpose, shall select a person who possesses the constitutional qualifications for a member of the general assembly and who is affiliated with the same political party or minor political party, if any, shown on the registration books of the county clerk and recorder as the former member whose seat is vacant. No meeting shall be held until a quorum is present consisting of not less than one-half of the voting membership of the vacancy committee. No member of the vacancy committee may vote by proxy. The committee shall certify the selection to the secretary of state within ten days from the date the vacancy occurs; except that, in the case of a vacancy filled pursuant to section 1-4-1002 (2.5), the committee shall certify the selection within ten days after the date of the general election affected by the vacancy. If the vacancy committee fails to certify a selection within ten days in accordance with the provisions of this subsection (3), the governor, within five days, shall fill the vacancy by appointing a person having the qualifications set forth in this subsection (3). The name of the person selected or appointed shall be certified to the secretary of state. No sooner than two days after receiving such certification from the vacancy committee, the secretary of state shall certify the name to the appropriate house of the general assembly. The person, after having qualified and taken the oath of office, shall

immediately assume the duties of office and shall serve until the next convening of the general assembly following the election certification and qualification of a successor.

(4) If the vacancy is caused by the resignation of a member of the general assembly and the letter of resignation gives an effective date of resignation that is later than the date the letter of resignation is submitted, the vacancy committee may meet no more than twenty days prior to the effective date of the resignation for the purposes of nominating a person to fill the vacancy. The certification of the nominee of the vacancy committee to the secretary of state may not be made prior to the effective date of the resignation; further, should the member of the general assembly withdraw the letter of resignation prior to the effective date, the person nominated by the vacancy committee may not be certified to the secretary of state.

(5) If the vacancy is caused by the death of a member-elect of the general assembly who has been elected to office but who has not yet been sworn in, the vacancy committee shall meet no more than ten days after the death of the general assembly member-elect to fill the vacancy. The certification of the nomination of the vacancy committee to the secretary of state may be made prior to the convening of the general assembly but shall not take effect until the effective date of the vacancy, which is the first day the general assembly convenes.

Source: L. 92: Entire article R&RE, p. 800, § 15, effective January 1, 1993. **L. 95:** (1) and (3) amended and (4) and (5) added, p. 851, § 80, effective July 1. **L. 98:** (1) and (3) amended, p. 260, § 15, effective April 13; (3) amended, p. 812, § 2, effective May 26. **L. 99:** (3) amended, p. 934, § 4, effective August 4.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-103 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-103 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

(2) Amendments to subsection (3) by House Bill 98-1110 and Senate Bill 98-193 were harmonized.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 100-109.

include cases decided under former provisions similar to this section.

Applied in *Kallenberger v. Buchanan*, 649 P.2d 314 (Colo. 1982).

Annotator's note. The following annotations

1-12-204. Vacancies in state and district offices. All vacancies in any state office and in the office of district attorney shall be filled by appointment by the governor until the next general election after the vacancy occurs, when the vacancy shall be filled by election.

Source: L. 92: Entire article R&RE, p. 801, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-12-104 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-104 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 38 Am. Jur.2d, Governor, § 6; 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 100-109.

1-12-205. Vacancies in county offices. All vacancies in any county office, except that of county commissioner, shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs, until the next general election, at which time the vacancy shall be filled by election.

Source: L. 92: Entire article R&RE, p. 801, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-12-105 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-11-105 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

Cross references: For determination of existence of vacancy in county offices, see § 30-10-105.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, §§ 127-131.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 100-109.

Annotator's note. The following annotations include cases decided under former provisions similar to

this section.

Where a county clerk-elect died before qualification, a vacancy in the office occurred on the expiration of the term of the then incumbent, to be filled by appointment by the county commissioners. *Gibbs v. People ex rel. Watts*, 66 Colo. 414, 182 P. 894 (1919).

1-12-206. Vacancies in the office of county commissioner. (1) In case of a vacancy occurring in the office of county commissioner, a vacancy committee constituted as provided in this section shall, by a majority vote of the quorum present, fill the vacancy by appointment within ten days after the occurrence of the vacancy. If the vacancy committee fails to fill the vacancy within ten days, the governor shall fill it by appointment within fifteen days.

(2) If the vacating commissioner was elected by the electors of the whole county, whether at large or from a district, the successor shall be appointed by a vacancy committee constituted of those persons selected at the county central committee organizational meeting of the same political party as the vacating commissioner.

(3) If the vacating commissioner was elected only by the electors of the district from which the vacating commissioner was elected, the county commissioner district central committee of the same district and political party as the vacating commissioner shall appoint a vacancy committee whose sole purpose shall be to name a successor to the position of county commissioner. In the event the county commissioner district central committee fails to appoint a vacancy committee, the vacancy committee shall consist of the chairperson and the vice-chairperson of the county commissioner district central committee, and a third person designated by the chairperson and vice-chairperson from among the precinct committee persons of the same district and the same political party as the vacating commissioner.

(4) If the vacating commissioner is unaffiliated, then a registered unaffiliated successor shall be appointed by the governor, acting as a vacancy committee, within ten days after the vacancy.

(4.5) If the vacating commissioner is affiliated with a minor political party, then a registered elector affiliated with the same minor political party shall be appointed as the successor pursuant to the constitution or bylaws of the minor political party.

(5) Any person appointed to a vacancy in the office of county commissioner under this section shall be a resident of the county and reside within the district, if any, in which the vacancy exists and shall be a member of the same political party or minor political party, if any, shown on the registration books of the county clerk and recorder as the vacating commissioner. Any person appointed pursuant to this section shall hold the office until the next general election or until the vacancy is filled by election according to law.

Source: L. 92: Entire article R&RE, p. 801, § 15, effective January 1, 1993. **L. 98:** (4.5) added and (5) amended, p. 260, § 16, effective April 13.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-106 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 30-10-309 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

1-12-207. Vacancies on nonpartisan boards. (1) Any vacancy on a nonpartisan board shall be filled by appointment by the remaining director or directors. The appointee shall meet all of the qualifications for holding the office. The appointee shall serve until the next regular election, at which time any remaining unexpired portion of the term shall be filled by election. If the board fails, neglects, or refuses to fill any vacancy within sixty days after it occurs, the board of county commissioners of the county in which the organizational petition is filed shall fill the vacancy.

(2) If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district, then the board of county commissioners of the county in which the organizational petition is filed may appoint all directors. Any board appointed pursuant to this subsection (2) shall call a special election within six months after its appointment.

Source: L. 92: Entire article R&RE, p. 802, § 15, effective January 1, 1993.

ANNOTATION

A director appointed to the board of a ground water management district pursuant to § 37-90-126 must stand for election at the district's next regular election. The ground water management law does not

address the issue. Because the election code was intended to provide answers to election procedures not included in other statutes, this section controls. *Deutsch v. Kalcevic*, 140 P.3d 340 (Colo. App. 2006).

1-12-208. Unexpired terms less than ninety days. No person shall be elected to fill a vacancy in an elective office when the unexpired term is, at the time of the election, less than ninety days. In such case, the person appointed to fill the vacancy shall continue to hold the office for the remainder of the unexpired term and until the successor elected at the election is duly qualified.

Source: L. 92: Entire article R&RE, p. 802, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are the same as those contained in 1-12-107 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are the same as those contained in 1-11-106 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 104-107.

1-12-209. Terms of persons filling vacancies. Except for appointments on nonpartisan boards, any officers elected or appointed to fill vacancies as provided in this article shall qualify and enter upon the duties of their offices immediately thereafter. If elected or appointed, the officers shall hold the office during the unexpired term for which they were elected and until their successors are elected, qualified, and take office on the second Tuesday of January, except as otherwise provided by law, in accordance with section 1-1-201.

Source: L. 92: Entire article R&RE, p. 802, § 15, effective January 1, 1993.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980 and 1992. Provisions of this section, as it existed in 1992, are similar to those contained in 1-12-108 as said section existed in 1991, the year prior to the most recent repeal and reenactment of this article. Provisions of this section, as it existed in 1980, are similar to those contained in 1-11-107 as said section existed in 1979, the year prior to the first repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 63A Am. Jur.2d, Public

Officers and Employees, § 155.

C.J.S. See 67 C.J.S., Officers and Public Employees, §§ 104-107.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One appointed to fill the vacant and unexpired term of a public office holds precisely as his predecessor would have done had the vacancy not

occurred. *People ex rel. Callaway v. De Guelle*, 47 Colo. 13, 105 P. 1110 (1909).

And one elected to a public office has a contingent or inchoate right which becomes absolute upon qualification. No one else can enter into the office during the term for which another is elected, until the officer elected is ousted, or his right terminated, which can never occur until the day appointed by law for the enforcement of his term. If at that date he has failed to qualify, the office is vacant. *People ex rel. Callaway v. De Guelle*, 47 Colo. 13, 105 P. 1110 (1909).

1-12-210. Certification of appointment. All appointments under this article shall be evidenced by an appropriate entry in the minutes of the meeting of the governing board, and the appointing body shall cause a notice of appointment and the oath of office to be delivered to the person appointed. A duplicate of each notice of appointment, an acceptance of appointment, and the mailing address of the person appointed shall be kept as a permanent record by the appointing body and forwarded to any other appropriate official.

Source: L. 92: Entire article R&RE, p. 803, § 15, effective January 1, 1993.

ARTICLE 13

Election Offenses

Editor's note: This article was numbered as article 21 of chapter 49 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1980, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973 and annual supplements to this volume prior to 1980; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963. Former C.R.S. section numbers for sections that were relocated as a part of the repeal and reenactment are shown in editor's notes following each section.

Cross references: For applicability of this article to special district elections, see § 32-1-807; for election offenses in municipal elections, see part 15 of article 10 of title 31.

PART 1		1-13-202.	Unlawful qualification as taxpaying elector.
OFFENSES - GENERAL PROVISIONS		1-13-203.	Procuring false registration.
1-13-101.	District attorney or attorney general to prosecute.	1-13-204.	Adding names after registration closed.
1-13-102.	Sufficiency of complaint - judicial notice.	1-13-205.	County clerk and recorder signing wrongful registration.
1-13-103.	Immunity of witness from prosecution.	1-13-206.	Disposition of mail voter registration application. (Repealed)
1-13-104.	Perjury.	1-13-207.	Signature on registration record is proof of oath.
1-13-105.	False certificates by officers.	1-13-208.	Deputy county clerk and recorder - influencing party affiliation.
1-13-106.	Forgery.	1-13-209.	High school deputy registrar - influencing party affiliation.
1-13-107.	Violation of duty.		
1-13-108.	Anonymous statements concerning candidates or issues. (Repealed)		
1-13-109.	False or reckless statements relating to candidates or questions submitted to electors - penalties - definitions.		
1-13-110.	Wagers with electors.		
1-13-111.	Penalties for election offenses.		
1-13-112.	Offenses relating to mail ballots.	1-13-301.	Fraud at precinct caucus, assembly, or convention.
1-13-113.	Interference with distribution of election material.	1-13-302.	Fraudulent voting in precinct caucus, assembly, or convention.
1-13-114.	Failure to comply with requirements of secretary of state.	1-13-303.	Offenses at precinct caucus, assembly, or convention.

PART 2

OFFENSES - QUALIFICATIONS AND REGISTRATION OF ELECTORS

1-13-201. Interfering with or impeding
registration.

PART 3

OFFENSES - POLITICAL PARTY ORGANIZATION

1-13-301. Fraud at precinct caucus,
assembly, or convention.

1-13-302. Fraudulent voting in precinct
caucus, assembly, or
convention.

1-13-303. Offenses at precinct caucus,
assembly, or convention.

PART 4

OFFENSES - ACCESS TO BALLOT BY CANDIDATE

1-13-401. Bribery of petition signers.

- 1-13-402. Tampering with nomination papers - nomination petitions.
- 1-13-403. Defacing of petitions other than nominating petitions.

PART 5

(Reserved)

PART 6

OFFENSES - NOTICE AND PREPARATION FOR ELECTIONS

- 1-13-601. Tampering with notices or supplies.

PART 7

OFFENSES - CONDUCT OF ELECTIONS

- 1-13-701. Interference with election official.
- 1-13-702. Interfering with watcher.
- 1-13-703. Tampering with registration book, registration list, or pollbook.
- 1-13-704. Unlawfully refusing ballot or permitting to vote.
- 1-13-704.5. Voting by persons not entitled to vote - penalty.
- 1-13-705. Personating elector.
- 1-13-706. Delivering and receiving ballots at polls.
- 1-13-707. Inducing defective ballot.
- 1-13-708. Tampering with voting equipment.
- 1-13-708.5. Elected officials not to handle electronic or electromechanical voting equipment or devices.
- 1-13-709. Voting in wrong precinct.
- 1-13-709.5. Residence - false information - penalty.

- 1-13-710. Voting twice - penalty.
- 1-13-711. Interference with voter while voting.
- 1-13-712. Disclosing or identifying vote.
- 1-13-713. Intimidation.
- 1-13-714. Electioneering - removing and return of ballot.
- 1-13-715. Liquor in or near polling place.
- 1-13-716. Destroying, removing, or delaying delivery of election records.
- 1-13-717. Penalty for destruction of supplies.
- 1-13-718. Release of information concerning count.
- 1-13-719. Employer's unlawful acts.
- 1-13-720. Unlawfully giving or promising money or employment.
- 1-13-721. Receipt of money or jobs.
- 1-13-722. Defacing or removing abstract of votes.
- 1-13-723. Penalty for neglect of duty - destruction of ballots - breaking seal.

PART 8

OFFENSES - MAIL-IN VOTING AND VOTING BY NEW RESIDENTS

- 1-13-801. Mailing other materials with main-in voter's ballot.
- 1-13-802. Mail-in voter applications and deliveries outside county clerk and recorder's office.
- 1-13-803. Offenses relating to mail-in voting.

PART 9

(Reserved)

PART 1

OFFENSES - GENERAL PROVISIONS

1-13-101. District attorney or attorney general to prosecute. (1) Any person may file an affidavit with the district attorney stating the name of any person who has violated any of the provisions of this code and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, he shall prosecute the violator.

(2) The attorney general shall have equal power with district attorneys to file and prosecute informations or complaints against any persons for violating any of the provisions of this code.

Source: L. 80: Entire article R&RE, p. 428, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-101 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-102. Sufficiency of complaint - judicial notice. Irregularities or defects in the mode of calling, giving notice of, convening, holding, or conducting any general, primary, or congressional vacancy election authorized by law constitute no defense to a prosecution for a violation of this code. When an offense is committed in relation to any general, primary, or congressional vacancy election, an indictment, information, or complaint for such offense is sufficient if it alleges that such election was authorized by law without stating the call or notice of the election, the names of the judges holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any general, primary, or congressional vacancy election.

Source: L. 80: Entire article R&RE, p. 428, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-102 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 409-417, 471. **C.J.S.** See 29 C.J.S., Elections, § 540.

1-13-103. Immunity of witness from prosecution. Any person violating any of the provisions of this code is a competent witness against any other violator and may be compelled to attend and testify at any trial, hearing, proceeding, or investigation in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which his testimony was given and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-103 and similar to 1-30-116 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 477.

1-13-104. Perjury. Any person, having taken any oath or made any affirmation required by this code, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or who suborns any other person to swear or affirm as aforesaid commits perjury in the second degree as set forth in section 18-8-503, C.R.S., and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 80:** Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 2002:** Entire section amended, p. 1464, § 5, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-106, 1-30-123, and 1-30-124 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

1-13-105. False certificates by officers. Any notary public or any officer authorized by law to administer oaths who knowingly makes a false certificate in regard to a matter connected with an election held under the laws of this state commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 80:** Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 2002:** Entire section amended, p. 1464, § 6, effective October 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-111 and 1-30-125 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: (1) For the power of officers to administer oaths, see § 24-12-103.
(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 549.

1-13-106. Forgery. Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges any letter of acceptance, declination, or withdrawal, or who forges the name of a registered elector to a mail-in voter's ballot commits forgery as set forth in section 18-5-102, C.R.S., and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 80:** Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1435, § 120, effective July 1. **L. 94:** Entire section amended, p. 1622, § 5, effective May 31. **L. 2002:** Entire section amended, p. 1464, § 7, effective October 1. **L. 2007:** Entire section amended, p. 1797, § 65, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-107 and similar to 1-30-130 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461. **C.J.S.** See 29 C.J.S., Elections, §§ 547, 556.

1-13-107. Violation of duty. Any public officer, election official, or other person upon whom any duty is imposed by this code who violates, neglects, or fails to perform such duty or is guilty of corrupt conduct in the discharge of the same or any notary public or other officer authorized by law to administer oaths who administers any oath knowing it to be false or who knowingly makes a false certificate in regard to a matter connected with any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-111 and similar to 1-30-113 (1) as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 549.

1-13-108. Anonymous statements concerning candidates or issues. (Repealed)

Source: L. 80: Entire article R&RE, p. 429, § 1, effective January 1, 1981. **L. 87:** Entire section amended, p. 297, § 30, effective June 26. **L. 89:** Entire section amended, p. 311, § 25, effective May 9. **L. 97:** Entire section repealed, p. 1545, § 15, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, was similar to 1-13-150 and 1-30-131 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-109. False or reckless statements relating to candidates or questions submitted to electors - penalties - definitions. (1) (a) No person shall knowingly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office.

(b) Any person who violates any provision of paragraph (a) of this subsection (1) commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(2) (a) No person shall recklessly make, publish, broadcast, or circulate or cause to be made, published, broadcasted, or circulated in any letter, circular, advertisement, or poster or in any other communication any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office. Notwithstanding any other provision of law, for purposes of this subsection (2), a person acts "recklessly" when he or she acts in conscious disregard of the truth or falsity of the statement made, published, broadcasted, or circulated.

(b) Any person who violates any provision of paragraph (a) of this subsection (2) commits a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

(3) For purposes of this section, "person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons, including a group organized under section 527 of the internal revenue code.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981. L. 2002: (2) amended, p. 1464, § 8, effective October 1. L. 2005: Entire section amended, p. 1366, § 1, effective September 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-30-133 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

1-13-110. Wagers with electors. It is unlawful for any person, including any candidate for election to public office, before or during any election provided by law, to make any bet or wager with an elector, or take a share or interest in, or in any manner become a party to, any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager upon any event or contingency arising out of such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-126 and similar to 1-30-104 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 549.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The prohibition of wagers with electors is penal in nature. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

But it does not make a forfeiture of office a part of the punishment. Bd. of Trustees v. People ex rel.

Keith, 13 Colo. App. 553, 59 P. 72 (1899).

Even if the offense were sufficient to justify a removal from office, a board of trustees could not remove the mayor of a town on such charge till he had been tried and convicted in a court of competent jurisdiction. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

1-13-111. Penalties for election offenses. In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-104 (2) as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 469-474.

1-13-112. Offenses relating to mail ballots. Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys,

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defaces, mutilates, or tampers with such a ballot shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 90: Entire section added, p. 318, § 2, effective January 1, 1991. **L. 95:** Entire section amended, p. 852, § 83, effective July 1.

1-13-113. Interference with distribution of election material. During the period beginning forty-five days before and ending four days after any election, any person who prevents, hinders, or interferes with the lawful distribution of any card, pamphlet, circular, poster, handbill, yard sign, or other written material relating to any candidate for election for any office or relating to any issue that is to be submitted to the electors in any election, or any person who removes, defaces, or destroys any lawfully placed billboard, sign, or written material from any premises to which it was delivered, commits a misdemeanor and shall be punished by a fine of not more than seven hundred fifty dollars. Any person found guilty of removing, defacing, or destroying any billboard, sign, or written material shall pay the cost of replacement. The owner of the premises, an authorized agent of the owner, or any person charged with enforcement of any state law, ordinance, or regulation may remove any billboard, sign, or written material without penalty when placed without permission or authorization of the owner of such premises, or in violation of state law or county or municipal ordinance or regulation, or which is in place at any time other than during the period beginning forty-five days before and ending four days after any election.

Source: L. 93: Entire section added, p. 1627, § 1, effective July 1.

1-13-114. Failure to comply with requirements of secretary of state. Any person who willfully interferes or willfully refuses to comply with the rules of the secretary of state or the secretary of state's designated agent in the carrying out of the powers and duties prescribed in section 1-1-107 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: L. 96: Entire section added with relocations, p. 1764, § 48, effective July 1.

Editor's note: This section was formerly numbered as 1-1-107 (3).

PART 2

OFFENSES - QUALIFICATIONS AND REGISTRATION OF ELECTORS

1-13-201. Interfering with or impeding registration. Any person who intentionally interferes with or impedes the registration of electors, whether by act of commission or by failure to perform any act or duty imposed or required for the proper administration of parts 2 and 3 of article 2 of this title, or who knowingly permits or encourages another to do so is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. A person who collects a voter registration application from an eligible elector for mailing or delivery to the county clerk and recorder and who fails to mail or deliver the application to the proper county clerk and recorder within five business days after the application is signed is guilty of a violation of this section.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981. **L. 2005:** Entire section amended, p. 1425, § 54, effective June 6; entire section amended, p. 1460, § 54, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-108 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461.

C.J.S. See 29 C.J.S., Elections, § 548.

1-13-202. Unlawful qualification as taxpaying elector. It is unlawful to take or place title to property in the name of another or to pay the taxes or to take or issue a tax receipt in the name of another for the purpose of attempting to qualify such person as a taxpaying elector or as a qualified taxpaying elector or to aid or assist any person to do so. The ballot of any person violating this section shall be void. Any person, company, corporation, or association violating this section shall forfeit and lose all rights, franchises, or other benefits accruing or to accrue to the benefit of such person, company, corporation, or association by or as the result of any such election. Any person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 430, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-113 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 547, 548.

1-13-203. Procuring false registration. It is unlawful for any person to procure his or her own name, or the name of any other person, to be registered in the registration book of a precinct in which such person is not, at the time of such registration, entitled to be registered or for any person to procure any fictitious name to be registered in the registration book of any precinct. Any person who violates any of the provisions of this section shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Each violation shall be considered a separate offense.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 852, § 84, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-114 and 1-30-119 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 548.

1-13-204. Adding names after registration closed. No name shall be added to the registration book of any precinct after the close of the registration, and, if any county clerk and recorder, judge of election, or other person willfully and knowingly adds any such name of any person or any fictitious or false name to the registration book of any precinct after the close of registration, he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars. Each violation shall be considered a separate offense.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-117 and 1-30-120 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 548.

1-13-205. County clerk and recorder signing wrongful registration. Every county clerk and recorder who willfully signs his name on the registration record opposite the name of any person knowing that said person is not legally entitled to be registered pursuant to the provisions of section 1-2-101 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 91:** Entire section amended, p. 638, § 79, effective May 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-115 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 548.

1-13-206. Disposition of mail voter registration application. (Repealed)

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 95:** Entire section repealed, p. 853, § 88, effective July 1.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, was similar to 1-13-118 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-207. Signature on registration record is proof of oath. Any elector, election official, or other person, by his signature on the registration record, shall be conclusively deemed in law to have duly verified such registration record. The registration record containing such signature, or a copy thereof certified by the county clerk and recorder, shall be admissible in evidence as proof of the taking of an oath or affirmation as to the information contained therein in all criminal proceedings pursuant to sections 1-13-104, 1-13-203, and 1-13-205.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981. **L. 91:** Entire section amended, p. 638, § 80, effective May 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-116 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 548.

1-13-208. Deputy county clerk and recorder - influencing party affiliation. Any deputy county clerk and recorder for voter registration purposes, or employee of the department of revenue who

is authorized to conduct voter registration at local driver's license examination facilities, or employee of a voter registration agency who is authorized to conduct voter registration who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

Source: L. 92: Entire section added, p. 803, § 16, effective January 1, 1993. **L. 94:** Entire section amended, p. 1771, § 34, effective January 1, 1995.

1-13-209. High school deputy registrar - influencing party affiliation. Any high school deputy registrar for voter registration purposes who influences or attempts to influence any person during the registration process to affiliate with a political party or to affiliate with a specific political party is guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13-111.

Source: L. 92: Entire section added, p. 623, § 2, effective July 1. **L. 93:** Entire section amended, p. 1435, § 121, effective July 1.

PART 3

OFFENSES - POLITICAL PARTY ORGANIZATION

1-13-301. Fraud at precinct caucus, assembly, or convention. Any person in authority at any precinct caucus, assembly, or convention who in any manner dishonestly, corruptly, or fraudulently performs any act devolving on him by virtue of the position of trust which he fills or knowingly aids or abets any other person to do any fraudulent, dishonest, or corrupt act or thing in reference to the carrying on of any precinct caucus, assembly, or convention or the ascertaining or promulgating of its true will is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-112 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 553.

1-13-302. Fraudulent voting in precinct caucus, assembly, or convention. Any person who fraudulently participates and votes in a precinct caucus, assembly, or convention when he is not a member of the political party holding such precinct caucus, assembly, or convention, as shown on the registration books of the county clerk and recorder, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 431, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-119 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 553.

1-13-303. Offenses at precinct caucus, assembly, or convention. (1) It is unlawful for any person at any precinct caucus, assembly, or convention:

- (a) To fraudulently vote more than once; or
- (b) To knowingly hand in two or more ballots deceitfully folded together; or
- (c) To knowingly procure, aid, counsel, or advise another to vote or attempt to vote fraudulently or corruptly; or
- (d) To falsely personate any elector and vote under his name or under an assumed name; or
- (e) To fraudulently procure, aid, abet, or encourage, directly or indirectly, any person to attempt to falsely personate any elector or to vote under an assumed name; or
- (f) To influence any voter in the casting of his vote by bribery, duress, or any other corrupt or fraudulent means; or
- (g) To receive any money or valuable thing, or the promise of either, for casting his vote for or against any person or measure or to offer his vote for or against any person or measure in consideration of money or other valuable thing, or the promise of either.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 432, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-120 and similar to 1-30-127 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461. **C.J.S.** See 29 C.J.S., Elections, § 540.

PART 4

OFFENSES - ACCESS TO BALLOT BY CANDIDATE

1-13-401. Bribery of petition signers. Any person who offers or, with knowledge of the same, permits any person to offer for his benefit any bribe or promise of gain to an elector to induce him to sign any petition or other election paper or any person who accepts any bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after signing, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 432, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-121 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461.

C.J.S. See 29 C.J.S., Elections, § 554.

1-13-402. Tampering with nomination papers - nomination petitions. (1) Any person who, being in possession of any petition, certificate of nomination, or letter of acceptance, declination, or withdrawal, wrongfully or willfully destroys, defaces, mutilates, suppresses, neglects to file, or fails to cause to be filed the same within the prescribed time or who files any such paper knowing the same, or any part thereof, to be falsely made or who adds, amends, alters, or in any way changes the information on the petition as written by a signing elector is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any person who willfully destroys, defaces, mutilates, or suppresses any nomination petition or who willfully neglects to file or delays the delivery of the nomination petition or who conceals or removes any petition from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 432, § 1, effective January 1, 1981. **L. 88:** Entire section amended, p. 294, § 5, effective May 29. **L. 89:** (1) amended, p. 311, § 26, effective May 9.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-129 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 25 Am. Jur.2d, Elections, § 219.

1-13-403. Defacing of petitions other than nominating petitions. Any person who willfully destroys, defaces, mutilates, or suppresses a petition; who willfully neglects to file or delays delivery of a petition; who conceals or removes a petition from the possession of the person authorized by law to have custody of it; or who aids, counsels, procures, or assists any person in doing any of the above acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 95: Entire section added, p. 852, § 84, effective July 1. **L. 96:** Entire section amended, p. 1764, § 49, effective July 1.

PART 5

(Reserved)

PART 6

OFFENSES - NOTICE AND PREPARATION FOR ELECTIONS

1-13-601. Tampering with notices or supplies. Any person who, prior to an election, willfully defaces, removes, or destroys any notice of election posted in accordance with the provisions of this code, or who, during an election, willfully defaces, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of electors, or who, during an election, willfully defaces, removes, or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-130 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 345, 540.

PART 7

OFFENSES - CONDUCT OF ELECTIONS

1-13-701. Interference with election official. Any person who, at any election provided by law, interferes in any manner with any election official in the discharge of his duty or who induces any election official to violate or refuse to comply with his duty or any law regulating the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-109 and 1-30-108 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 449-461. **C.J.S.** See 29 C.J.S., Elections, § 550.

1-13-702. Interfering with watcher. Any person who intentionally interferes with any watcher while he is discharging his duties set forth in section 1-7-108 (3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981. **L. 2003:** Entire section amended, p. 1981, § 1, effective May 22.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-110 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 550.

1-13-703. Tampering with registration book, registration list, or pollbook. Any person who mutilates or erases any name, figure, or word in any registration book, registration list, or pollbook; or who removes such registration book, registration list, or pollbook or any part thereof from the place where it has been deposited with an intention to destroy the same, or to procure or prevent the election of any person, or to prevent any voter from voting; or who destroys any registration book, registration list, or pollbook or part thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-131 and similar to 1-30-129 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 540.

1-13-704. Unlawfully refusing ballot or permitting to vote. If at any election provided by law any judge of election willfully and maliciously refuses or neglects to receive the ballot of any registered elector who has taken or offered to take the oath prescribed by section 1-9-204 or knowingly and willfully permits any person to vote who is not entitled to vote at such election, such judge is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-134 and similar to 1-30-117 and 1-30-126 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 551.

1-13-704.5. Voting by persons not entitled to vote - penalty. (1) Any person voting in any election provided by law knowing that he or she is not entitled to vote in such election commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Source: L. 2006, 1st Ex. Sess.: Entire section added, p. 19, § 1, effective July 31.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

1-13-705. Personating elector. Any person who falsely personates any elector and votes at any election provided by law under the name of such elector shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 853, § 85, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-30-122 and 1-13-136 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 452.

C.J.S. See 29 C.J.S., Elections, § 547.

1-13-706. Delivering and receiving ballots at polls. (1) No voter shall receive an official ballot from any person except one of the judges of election having charge of the ballots, nor shall any person other than such judge deliver an official ballot to such voter.

(2) No person except a judge of election shall receive from any voter a ballot prepared for voting.

(3) Any voter who does not vote the ballot received by him shall return his ballot to the judge from whom he received the same before leaving the polling place.

(4) Each violation of the provisions of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 433, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-139 and similar to 1-30-114 (2) as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-707. Inducing defective ballot. Any person who causes any deceit to be practiced with intent to fraudulently induce a voter to deposit a defective ballot so as to have the ballot thrown out and not counted is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-133 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-708. Tampering with voting equipment. Any person who tampers with any electronic or electromechanical voting equipment before, during, or after any election provided by law with intent to change the tabulation of votes thereon to reflect other than an accurate accounting is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 2004:** Entire section amended, p. 1361, § 28, effective May 28. **L. 2007:** Entire section amended, p. 1982, § 33, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-132 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Section 31 of chapter 334, Session Laws of Colorado 2004, provides that the act amending this section takes effect January 1, 2006. However, section 31 was further amended establishing an effective date of May 28, 2004, for this section. For such amendment, see section 108 of chapter 316, Session Laws of Colorado 2004.

(3) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

1-13-708.5. Elected officials not to handle electronic or electromechanical voting equipment or devices. Any person who violates any provision of section 1-5-607 is guilty of a misdemeanor and shall be punished as provided in section 1-13-111.

Source: L. 96: Entire section added with relocations, p. 1764, § 50, effective July 1.

Editor's note: This section was formerly numbered as 1-5-607 (4).

1-13-709. Voting in wrong precinct. Any person who, at any election provided by law, knowingly votes or offers to vote in any election precinct in which he or she is not qualified to vote shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: **L. 80:** Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 853, § 86, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-135 and 1-30-128 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 452.

Conduct prohibited by this section is sufficiently distinguishable from felony election statute to create two separate offenses, avoiding violation of equal protection clause. This section relates to voting or the offer to vote in a precinct in which defendant is not qualified to vote. Felony statute relates to actually voting by providing

false information regarding place of residence. *People v. Onesimo Romero*, 746 P.2d 534 (Colo. 1987).

Voting in the wrong precinct is an unclassified misdemeanor, and trial court may not reclassify the offense as a petty offense but must apply the penalties and statute of limitation consistent with the limits and constraints legislatively imposed by statute. *People v. Onesimo Romero*, 746 P.2d 534 (Colo. 1987).

1-13-709.5. Residence - false information - penalty. Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 96:** Entire section added, p. 1764, § 51, effective July 1. **L. 2002:** Entire section amended, p. 1464, § 9, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

1-13-710. Voting twice - penalty. Any voter who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: **L. 80:** Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 95:** Entire section amended, p. 853, § 87, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-137 and 1-30-101 as said sections existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 452.

C.J.S. See 29 C.J.S., Elections, § 547.

1-13-711. Interference with voter while voting. Any person who interferes with any voter who is inside the immediate voting area or is marking a ballot or operating a voting device or electronic voting device at any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981. **L. 2004:** Entire section amended, p. 1361, § 29, effective May 28.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-138 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the legislative declaration contained in the 2004 act amending this section, see section 1 of chapter 334, Session Laws of Colorado 2004.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 551.

1-13-712. Disclosing or identifying vote. (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.

(2) No person shall endeavor to induce any voter to show how he marked his ballot.

(3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.

(4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 434, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, §§ 325, 549.

1-13-713. Intimidation. It is unlawful for any person directly or indirectly, by himself or by any other person in his behalf, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any elector or to compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election provided by law or to give or refrain from giving his vote for any particular person or measure at any such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

Cross references: For criminal extortion (formerly criminal intimidation), see § 18-3-207.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 457. **C.J.S.** See 29 C.J.S., Elections, § 551.

1-13-714. Electioneering - removing and return of ballot. No person shall do any electioneering on the day of any election within any polling place or in any public street or room or in any public manner within one hundred feet of any building in which a polling place is located, as publicly posted by the designated election official. As used in this section, the term "electioneering" includes campaigning for or against any candidate who is on the ballot or any ballot issue or ballot question that is on the ballot. "Electioneering" also includes soliciting signatures for a candidate petition, a recall petition, or a petition to place a ballot issue or ballot question on a subsequent ballot. "Electioneering" shall not include a respectful display of the American flag. No person shall remove any official ballot from the polling place before the closing of the polls. Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981. L. 94: Entire section amended, p. 1179, § 72, effective July 1. L. 95: Entire section amended, p. 853, § 88, effective July 1. L. 2006: Entire section amended, p. 2035, § 23, effective June 6.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 451.

1-13-715. Liquor in or near polling place. (1) It is unlawful for any election official or other person to introduce into any polling place, or to use therein, or to offer to another for use therein, at any time while any election is in progress or the result thereof is being ascertained by the counting of the ballots, any intoxicating malt, spirituous, or vinous liquors.

(2) It is unlawful for any officer or board of officers of any county or any municipality, whether incorporated under general law or by special charter, who may at any time be by law charged with the duty of designating polling places for the holding of any general or congressional election therein, to select therefor a room wherein any intoxicating malt, spirituous, or vinous liquors are usually sold for consumption on the premises.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981. L. 83: (2) amended, p. 358, § 31, effective July 1. L. 96: (2) amended, p. 1765, § 52, effective July 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

1-13-716. Destroying, removing, or delaying delivery of election records. (1) No person shall willfully destroy, deface, or alter any ballot or any election records or willfully delay the delivery of any such ballots or election records, or take, carry away, conceal, or remove any ballot, ballot box, or election records from the polling place or from the possession of a person authorized by law to have the custody thereof, or aid, counsel, procure, advise, or assist any person to do any of the aforesaid acts.

(2) No election official who has undertaken to deliver the official ballots and election records to the county clerk and recorder shall neglect or refuse to do so within the time prescribed by law or shall fail to account fully for all official ballots and other records in his charge. Informality in the delivery of

the ballots and election records shall not invalidate the vote of any precinct if such records are delivered prior to the canvassing of the votes by the county board of canvassers.

(3) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 435, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 453. **C.J.S.** See 29 C.J.S., Elections, § 549.

1-13-717. Penalty for destruction of supplies. Any person who, during an election, willfully defaces, tears down, removes, or destroys any card of instruction or sample ballot printed or posted for the instruction of voters or who, during an election, willfully removes or destroys any of the supplies or conveniences furnished to enable a voter to prepare his ballot or willfully hinders the voting of others is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-30-112 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-718. Release of information concerning count. Any election official, watcher, or other person who releases information concerning the count of ballots cast at precinct polling places or of mail-in voters' ballots prior to 7 p.m. on the day of the election is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 122, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 66, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-144 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Where there is a gross disregard of the procedure and formalities in the conduct of elections, whether permitted by design, through ignorance, or negligence, the returns should be rejected. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

And it is not necessary that actual fraud should be committed. *People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

But mere disclosure of early returns must affect result to set aside election. While it is a misdemeanor to disclose to anyone the comparative standing of candidates or questions being voted upon during an election while the polls are still open, an election will not be set aside for this reason alone unless this fact has been shown to affect the result of the election. *Montrose v. Niles*, 124 Colo. 535, 238 P.2d 875 (1951).

1-13-719. Employer's unlawful acts. (1) It is unlawful for any employer, whether corporation, association, company, firm, or person, or any officer or agent of such employer:

(a) In any manner to control the action of his employees in casting their votes for or against any person or measure at any precinct caucus, assembly, or convention; or

(b) To refuse to an employee the privilege of taking time off to vote as provided by section 1-7-102, or to subject an employee to a penalty or reduction of wages because of the exercise of such privilege, or to violate any of the provisions of section 1-7-102 in any other way; or

(c) In paying his employees the salary or wages due them, to enclose their pay in pay envelopes upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions, views, or actions of such employees; or

(d) Within ninety days of any election provided by law, to put up or otherwise exhibit in his factory, workshop, mine, mill, boardinghouse, office, or other establishment or place where his employees may be working or be present in the course of such employment any handbill, notice, or placard containing any threat, notice, or information that, if any particular ticket or candidate is elected, work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced or containing other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

(2) Each offense mentioned in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111. In addition thereto, any corporation violating this section shall forfeit its charter and right to do business in this state.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

C.J.S. See 29 C.J.S., Elections, § 551.

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

1-13-720. Unlawfully giving or promising money or employment. (1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or other valuable consideration to or for any elector, or to or for any other person, to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or to induce such elector to go to the polls or remain away from the polls at such election or on account of such elector having voted or refrained from voting for any particular person or issue or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money wholly or partially expended in bribery at any such election; or

(c) To give, offer, or promise any office, place, or employment or to promise, procure, or endeavor to procure any office, place, or employment to or for any elector, or to or for any other person,

in order to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or issue.

(2) Each offense set forth in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 436, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 454. **C.J.S.** See 29 C.J.S., Elections, §§ 540, 554.

1-13-721. Receipt of money or jobs. (1) It is a misdemeanor for any person, directly or indirectly, by himself or through any other person:

(a) Before or during an election provided by law, to receive, agree to accept, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;

(b) During or after an election provided by law, to receive any money or other valuable thing on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

Source: L. 80: Entire article R&RE, p. 437, § 1, effective January 1, 1981. **L. 82:** IP(1) amended, p. 220, § 1, effective February 19.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located in the back of the index.

Cross references: For the penalty for offenses denominated by this code as misdemeanors, see § 1-13-111.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, § 454. **Law reviews.** For note, "Voting on Company Time", see 20 Rocky Mt. L. Rev. 417 (1948). **C.J.S.** See 29 C.J.S., Elections, §§ 540, 554.

1-13-722. Defacing or removing abstract of votes. Any person who defaces, mutilates, alters, or removes the abstract of votes cast posted upon the outside of the polling place in accordance with section 1-7-602 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 437, § 1, effective January 1, 1981. **L. 99:** Entire section amended, p. 492, § 23, effective July 1; entire section amended, p. 616, § 1, effective August 4.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-149 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

(2) Amendments to this section by House Bill 99-1160 and House Bill 99-1360 were harmonized.

1-13-723. Penalty for neglect of duty - destruction of ballots - breaking seal. (1) Every officer upon whom any duty is imposed by any election law who violates his duty or who neglects or omits to perform the same is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

(2) Any official or person, except one authorized by law, who breaks or loosens a seal on a ballot or a ballot box with the intent to disclose or learn the number of such ballot or ballot box is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. Provisions of this section, as it existed in 1980, were contained in several sections in 1979, the year prior to the repeal and reenactment of this article. For a detailed comparison, see the table located at the back of the index.

PART 8

OFFENSES - MAIL-IN VOTING AND VOTING BY NEW RESIDENTS

1-13-801. Mailing other materials with mail-in voter's ballot. It is unlawful for any county clerk and recorder to deliver or mail to a registered elector, as a part of or in connection with the mail-in voter's ballot, anything other than the voting material as provided in article 8 of this title. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 123, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 67, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-145 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

Cross references: For the delivery of absentee voter's ballot, see § 1-8-111.

1-13-802. Mail-in voter applications and deliveries outside county clerk and recorder's office. No county clerk and recorder shall accept any application for any mail-in voter's ballot nor make personal delivery of any such ballot to the applicant unless such acceptance and delivery occurs within the confines of the official office of such county clerk and recorder, except as otherwise provided in sections 1-8-104, 1-8-106, and 1-8-112. Any acceptance or delivery contrary to the provisions of this section renders void the ballot to which it relates. Each violation of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 124, effective July 1. **L. 96:** Entire section amended, p. 1774, § 80, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 68, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is the same as 1-13-146 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

1-13-803. Offenses relating to mail-in voting. Any election official or other person who knowingly violates any of the provisions of article 8 of this title relative to the casting of mail-in voters' ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast by a mail-in voter shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Source: L. 80: Entire article R&RE, p. 438, § 1, effective January 1, 1981. **L. 93:** Entire section amended, p. 1436, § 125, effective July 1. **L. 95:** Entire section amended, p. 854, § 89, effective July 1. **L. 2007:** Entire section amended, p. 1797, § 69, effective June 1.

Editor's note: This section was contained in an article that was repealed and reenacted in 1980. This section, as it existed in 1980, is similar to 1-13-148 as said section existed in 1979, the year prior to the repeal and reenactment of this article.

PART 9

(Reserved)

ARTICLE 14

Affiliation, Designation, Nomination of Candidates

1-14-101 to 1-14-301. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 6 of chapter 49 in C.R.S. 1963. For amendments prior to its repeal in 1981, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1980; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

ARTICLE 15

Primary Elections

1-15-101 to 1-15-110. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 8 of chapter 49 in C.R.S. 1963. For amendments prior to its repeal in 1981, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1980; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

ARTICLE 16

General Elections

1-16-101 to 1-16-108. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 2 of chapter 49 in C.R.S. 1963. For amendments prior to its repeal in 1981, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1980; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

ARTICLE 17

Presidential Electors

1-17-101 and 1-17-102. (Repealed)

Source: L. 80: Entire article repealed, p. 418, § 38, effective January 1, 1981.

Editor's note: This article was numbered as article 20 of chapter 49 in C.R.S. 1963. For amendments prior to its repeal in 1981, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1980; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

OTHER ELECTION PROVISIONS

ARTICLE 30

Other Election Offenses

1-30-101 to 1-30-134. (Repealed)

Source: L. 80: Entire article repealed, p. 439, § 7, effective January 1, 1981.

Editor's note: This article was numbered as article 23 of chapter 49 in C.R.S. 1963. For amendments prior to its repeal in 1981, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1980; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements to C.R.S. 1963.

INITIATIVE AND REFERENDUM

ARTICLE 40

Initiative and Referendum

Editor's note: This entire article was amended by chapter 183, Session Laws of Colorado 1993, resulting in the relocation of provisions. The former C.R.S. number of each section and the C.R.S. number for sections that have been relocated are shown in an editor's note following each section. A comparative table showing the relocations is contained in the back of the index. For prior history of sections that have been relocated, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1993; the comparative tables located in the back of the index; and article 1 of chapter 70 in C.R.S. 1963.

Cross references: For amendments to the state constitution by the general assembly, see art. XIX, Colo. Const.

Law reviews: For article, "Structuring the Ballot Initiative: Procedures that Do and Don't Work", see 66 U. Colo. L. Rev. 47 (1995); for comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

1-40-101.	Legislative declaration.	1-40-119.	Procedure for hearings.
1-40-102.	Definitions.	1-40-120.	Filing in federal court.
1-40-103.	Applicability of article.	1-40-121.	Receiving money to circulate petitions - filing.
1-40-104.	Designated representatives.	1-40-122.	Certification of ballot titles.
1-40-105.	Filing procedure - review and comment - amendments - filing with secretary of state.	1-40-123.	Counting of votes - effective date - conflicting provisions.
1-40-106.	Title board - meetings - titles and submission clause.	1-40-124.	Publication.
1-40-106.5.	Single-subject requirements for initiated measures and referred constitutional amendments - legislative declaration.	1-40-124.5.	Ballot information booklet.
1-40-107.	Rehearing - appeal - fees - signing.	1-40-125.	Mailing to electors.
1-40-108.	Petition - time of filing.	1-40-126.	Explanation of effect of "yes" or "no" vote included in notices provided by mailing or publication.
1-40-109.	Signatures required.	1-40-127.	Ordinances - effective, when - referendum. (Repealed)
1-40-110.	Warning - ballot title.	1-40-128.	Ordinances, how proposed - conflicting measures. (Repealed)
1-40-111.	Signatures - affidavits.	1-40-129.	Voting on ordinances. (Repealed)
1-40-112.	Circulators - requirements.	1-40-130.	Unlawful acts - penalty.
1-40-113.	Form - representatives of signers.	1-40-131.	Tampering with initiative or referendum petition.
1-40-114.	Petitions - not election materials - no bilingual language requirement.	1-40-132.	Enforcement.
1-40-115.	Ballot - voting - publication.	1-40-133.	Retention of petitions.
1-40-116.	Verification - ballot issues - random sampling.	1-40-134.	Withdrawal of initiative petition.
1-40-117.	Statement of sufficiency - statewide issues.		
1-40-118.	Protest.		

1-40-101. Legislative declaration. It is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.

Source: L. 93: Entire article amended with relocations, p. 676, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-111. The former section 1-40-101 (1) was relocated to section 1-40-105 (1) and (2), section 1-40-101 (2), which was further amended by HB 93-1155, was relocated to section 1-40-105 (4) and section 1-40-106 (1) and (3), section 1-40-101 (3) was relocated to section 1-40-107 (1) and (2), and section 1-40-101 (4) was relocated to section 1-40-107 (6).

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 1-5.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This statute is constitutional. *Zaner v. City of Brighton*, 899 P.2d 263 (Colo. App. 1994).

The legislative intent of article 40 primarily is to make the initiative process fair and impartial. In re

Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Legislation may not restrict right to vote. Legislative acts which prescribe the procedure to be used in voting on initiatives may not restrict the free exercise of the right to vote. *City of Glendale v. Buchanan*, 195 Colo. 267, 578 P.2d 221 (1978).

1-40-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Ballot issue" means a nonrecall, citizen-initiated petition or legislatively-referred measure which is authorized by the state constitution, including a question as defined in sections 1-41-102 (3) and 1-41-103 (3), enacted in Senate Bill 93-98.

(2) "Ballot title" means the language which is printed on the ballot which is comprised of the submission clause and the title.

(3) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(4) "Draft" means the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes.

(5) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(6) "Section" means a bound compilation of initiative forms approved by the secretary of state, which shall include pages that contain the warning required by section 1-40-110 (1), the ballot title, and a copy of the proposed measure; succeeding pages that contain the warning, the ballot title, and ruled lines numbered consecutively for registered electors' signatures; and a final page that contains the affidavit required by section 1-40-111 (2). Each section shall be consecutively prenumbered by the petitioner prior to circulation.

(7) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(8) "Submission clause" means the language which is attached to the title to form a question which can be answered by "yes" or "no".

(9) (Deleted by amendment, L. 2000, p. 1621, § 3, effective August 2, 2000.)

(10) "Title" means a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.

Source: L. 93: Entire article amended with relocations, p. 676, § 1, effective May 4; (1) amended, p. 1436, § 126, effective July 1. **L. 95:** (3) to (7) and (9) amended, p. 430, § 2, effective May 8. **L. 2000:** (6) and (9) amended, p. 1621, § 3, effective August 2.

Editor's note: Subsection (1) is new, subsection (2) was formerly numbered as section 1-40-100.3 (1), subsection (3) is new, subsection (4) was formerly numbered as section 1-40-100.3 (2), subsection (5) is new, subsection (6) was formerly 2007

numbered as section 1-40-100.3 (3), subsection (7) is new, subsection (8) was formerly numbered as section 1-40-100.3 (4), subsection (9) was formerly numbered as section 1-40-100.3 (5), subsection (10) was formerly numbered as section 1-40-100.3 (6). The former section 1-40-102 (1), (2), and (3)(a) were deleted by amendment and section 1-40-102 (3)(b) was relocated to section 1-40-107 (5).

ANNOTATION

Title was not a brief statement that fairly and accurately represented the true intent and meaning of the proposed initiative where the title and summary did not contain any indication that the geographic area affected would have been limited, and therefore there would be a significant risk that voters statewide would have misperceived the scope of the proposed initiative. Matter

of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

The titles and summary were not misleading since they tracked the language of the initiative, and any problems in the interpretation of the measure or its constitutionality were beyond the functions assigned to the title board and outside the scope of the court's review of the title board's actions. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

1-40-103. Applicability of article. (1) This article shall apply to all state ballot issues that are authorized by the state constitution unless otherwise provided by statute, charter, or ordinance.

(2) The laws pertaining to municipal initiatives, referenda, and referred measures are governed by the provisions of article 11 of title 31, C.R.S.

(3) The laws pertaining to county petitions and referred measures are governed by the provisions of section 30-11-103.5, C.R.S.

(4) The laws pertaining to school district petitions and referred measures are governed by the provisions of section 22-30-104 (4), C.R.S.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4. **L. 95:** Entire section amended, p. 431, § 3, effective May 8. **L. 96:** (3) and (4) added, p. 1765, § 53, effective July 1.

Editor's note: This section is new. The former section 1-40-103 (1) was relocated to section 1-40-107 (3), and section 1-40-103 (2) was relocated to section 1-40-107 (4).

ANNOTATION

Petition was circulated within the period

specified by law. See Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

1-40-104. Designated representatives. At the time of any filing of a draft as provided in this article, the proponents shall designate the names and mailing addresses of two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4.

Editor's note: This section is new. The former section 1-40-104 was relocated to section 1-40-108 (1).

ANNOTATION

The designation requirement is a procedural one, so the proponents' failure to designate two persons to receive mail notices did not deprive the board of

jurisdiction. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (1) The original typewritten draft of every initiative petition for a proposed law or amendment to the state constitution to be enacted by the people, before it is signed by any elector, shall be submitted by the proponents of the petition to the directors of the legislative council and the office of legislative legal services for review and comment. Proponents are encouraged to write such drafts in plain, nontechnical

language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader. Upon request, any agency in the executive department shall assist in reviewing and preparing comments on the petition. No later than two weeks after the date of submission of the original draft, unless it is withdrawn by the proponents, the directors of the legislative council and the office of legislative legal services, or their designees, shall render their comments to the proponents of the petition concerning the format or contents of the petition at a meeting open to the public. Where appropriate, such comments shall also contain suggested editorial changes to promote compliance with the plain language provisions of this section. Except with the permission of the proponents, the comments shall not be disclosed to any person other than the proponents prior to the public meeting with the proponents of the petition.

(2) After the public meeting but before submission to the secretary of state for title setting, the proponents may amend the petition in response to some or all of the comments of the directors of the legislative council and the office of legislative legal services, or their designees. If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition shall be resubmitted to the directors for comment in accordance with subsection (1) of this section prior to submittal to the secretary of state as provided in subsection (4) of this section. If the directors have no additional comments concerning the amended petition, they may so notify the proponents in writing, and, in such case, a hearing on the amended petition pursuant to subsection (1) of this section is not required.

(3) To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters. The draft shall not present the issue to be decided in such manner that a vote for the measure would be a vote against the proposition or viewpoint that the voter believes that he or she is casting a vote for or, conversely, that a vote against the measure would be a vote for a proposition or viewpoint that the voter is against.

(4) After the conference provided in subsections (1) and (2) of this section, a copy of the original typewritten draft submitted to the directors of the legislative council and the office of legislative legal services, a copy of the amended draft with changes highlighted or otherwise indicated, if any amendments were made following the last conference conducted pursuant to subsections (1) and (2) of this section, and an original final draft which gives the final language for printing shall be submitted to the secretary of state without any title, submission clause, or ballot title providing the designation by which the voters shall express their choice for or against the proposed law or constitutional amendment.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4; (1) amended, p. 994, § 1, effective June 2. **L. 2000:** (4) amended, p. 1622, § 4, effective August 2.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-101 (1), subsection (3) was formerly numbered as section 1-40-101 (1.5) in HB 93-1155, which further amended this section, and subsection (4) was formerly numbered as section 1-40-101 (2), which was further amended by HB 93-1155. The former section 1-40-105 was relocated to section 1-40-109 (1) and (2).

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

- I. General Consideration.
- II. People's Right to Enact Own Legislation.
- III. Review and Comment by Legislative Agencies.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 30; 42 Am. Jur.2d, Initiative and

Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, § 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) For additional cases concerning the initiative and referendum power, see the annotations under § 1 of article V of the state constitution.

The purpose of the initiative and referendum embodied in the constitution was to expeditiously permit the free exercise of legislative powers by the people, and the procedural statutes enacted in connection therewith were adopted to facilitate the execution of the law. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938); *Matter of Title, Ballot Title & S. Clause*, 872 P.2d 689 (Colo. 1994).

And the procedural sections enacted in connection therewith were adopted to facilitate the execution of the law. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this most important privilege. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938); *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

Citizen held not to have an "interest in the matter in litigation" in mandamus proceedings. Where on protest the secretary of state refused to file or refile a tendered petition to initiate a measure under the initiative and referendum act, and mandamus is brought to compel him to file, a citizen who feels he will be injured by the measure has not such an "interest in the matter in litigation" or "in the success of either of the parties to the action", as gives him the right to intervene in the mandamus proceeding. *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

II. PEOPLE'S RIGHT TO ENACT OWN LEGISLATION.

People have reserved to themselves right of initiative in § 1 of art. V, Colo. Const. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

No discretion rests with administrative officials to pass upon the validity of an act proposed by the people. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

The people then undertake to legislate for themselves. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

And the initiative and referendum laws, where invoked by the people, supplant the city council or representative body. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

And in the exercise of their right to vote upon such proposal, wisely adopt or reject it. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

And the town or city clerk is required to perform certain statutory duties in connection therewith, for failure of which he is subject to penalties. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

Because it is not within the discretion of the clerk and city council to question the acts of their principal, the people. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

The people express their sanction and approval of the ordinance by their vote, and its enforcement is attempted by one whose rights are affected, then the courts are open to pass upon the question of its validity. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

But a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

And neither the supreme court nor any other court may be called upon to construe or pass upon a legislative act until it has been adopted. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

The only exception to this rule is the constitutional provision authorizing the general assembly to propound interrogatories to the supreme court upon important questions upon solemn occasions (§ 3 of art. VI, Colo. Const.). *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

Therefore, it is clear from the provisions of the initiative and referendum act and the penalties provided thereby that the legislature has been careful and diligent to safeguard the primary right of the people to propose and enact their own legislation. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

III. REVIEW AND COMMENT BY LEGISLATIVE AGENCIES.

Any proposed initiative must be submitted to the legislative research office and the legislative drafting office before it is submitted to the initiative title-setting board regardless of whether it is substantially similar to a previously proposed initiative. Without such submittal, the board lacks jurisdiction to set a title. In re Title Pertaining to "Tax Reform", 797 P.2d 1283 (Colo. 1990); In re Amendment Concerning Limited Gaming in the Town of Idaho Springs, 830 P.2d 963 (Colo. App. 1992).

But where legislative service agencies indicate that they have no additional comments beyond those made on first version of essentially the same proposal, it is not necessary to convene a second review and comment hearing. In re Second Proposed Initiative Concerning Uninterrupted Serv. by Pers. Employees, 613 P.2d 867 (Colo. 1980).

And where one feature of a proposal is not specifically pointed out by legislative service agencies, but is included in titles and summary, the measure needs not be remanded. *Matter of Proposed Initiative for an Amendment Entitled "W.A.T.E.R."*, 875 P.2d 861 (Colo. 1994).

No resubmission of the amended proposed initiative was required by subsection (2) since the amendments made by the proponents to the original proposed initiative were made in response to the comments

of the directors of the legislative council and the office of legislative legal services. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Where changes in final version of initiative submitted to secretary of state were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal services, the proponents of the initiative were not required to resubmit the initiative to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

While particular change was not made in direct response to the directors' questions, court concludes that, in the context of the amendment as a whole, it was a clarification and not a substantive change. Accordingly, change did not require resubmission to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Proponents' failure to indicate changes as specified in subsection (4) justified board's refusal to set a title. Matter of Proposed Initiative 1997-98 No. 109, 962 P.2d 252 (Colo. 1998).

1-40-106. Title board - meetings - titles and submission clause. (1) For ballot issues, beginning with the first submission of a draft after an election, the secretary of state shall convene a title board consisting of the secretary of state, the attorney general, and the director of the office of legislative legal services or the director's designee. The title board, by majority vote, shall proceed to designate and fix a proper fair title for each proposed law or constitutional amendment, together with a submission clause, at public meetings to be held at the hour determined by the title board on the first and third Wednesdays of each month in which a draft or a motion for reconsideration has been submitted to the secretary of state. To be considered at such meeting, a draft shall be submitted to the secretary of state no later than 3 p.m. on the twelfth day before the meeting at which the draft is to be considered by the title board. The first meeting of the title board shall be held no sooner than the first Wednesday in December after an election, and the last meeting shall be held no later than the third Wednesday in May in the year in which the measure is to be voted on.

(2) (Deleted by amendment, L. 95, p. 431, § 4, effective May 8, 1995.)

(3) (a) (Deleted by amendment, L. 2000, p. 1620, § 1, effective August 2, 2000.)

(b) In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board. Immediately upon completion, the secretary of state shall deliver the same with the original to the parties presenting it, keeping the copy with a record of the action taken thereon. Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

Source: L. 93: Entire article amended with relocations, p. 679, § 1, effective May 4. **L. 95:** (1), (2), and (3)(a) amended, p. 431, § 4, effective May 8. **L. 2000:** (3) amended, p. 1620, § 1, effective August 2. **L. 2004:** (1) amended, p. 756, § 1, effective May 12.

Editor's note: Subsections (1) and (3) were formerly numbered as section 1-40-101 (2), which was further amended by HB 93-1155, and subsection (2) is new. The former section 1-40-106 (1)(a) was relocated to section 1-40-110 (1), section 1-40-106 (1)(b) was relocated to section 1-40-110 (2), section 1-40-106 (2)(a) was relocated to section 1-40-111 (1), and section 1-40-106 (2)(b) was relocated to section 1-40-111 (2).

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

- I. General Consideration.
- II. Filing.
- III. Statutory Board.
- IV. Title; Ballot Title and Submission Clause.
 - A. Sufficiency of Titles.
- 1. In General.
- 2. Titles Held Sufficient.
- 3. Titles Held Insufficient.
 - B. Submission Clause.
 - C. Catch Phrases.
 - D. When Ballot Title and Submission Clause Fixed.
 - E. Brevity Required.
 - F. Scope of Review.
- V. Summary and Fiscal Impact Statement.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 32; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, § 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) For cases concerning the people's right to enact their own legislation, see the annotations under § 1-40-105.

(3) For additional cases concerning the initiative and referendum power, see the annotations under §1 of article V of the state constitution.

Flexible level of scrutiny applies to challenge of article V, section 1(5.5), of the Colorado Constitution and the statutory title-setting procedures implementing it. Under this standard, courts must weigh the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against the "precise interests put forward by the State as justifications for the burden imposed by its rule", taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights". Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983); Campbell v. Buckley, 11 F. Supp.2d 1260 (D. Colo. 1998).

Single-subject requirement in article V, section 1 (5.5), of the constitution and the statutory title-setting procedures implementing it do not violate initiative proponents' free speech or associational rights under the first amendment nor do they discriminate against proponents in violation of the fourteenth amendment's equal protection clause. Campbell v. Buckley, 11 F. Supp.2d 1260 (D. Colo. 1998), aff'd, 203 F.3d 738 (10th Cir. 2000).

The summary, single subject and title requirements serve to prevent voter confusion and

promote informed decisions by narrowing the initiative to a single matter and providing information on that single subject. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The requirements serve to prevent a provision that would not otherwise pass from becoming law by "piggybacking" it on a more popular proposal or concealing it in a long and complex initiative. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The 12-day notice requirement in subsection (1) only governs the time requirement for submitting a draft of the text of the initiative. Subsection (1) does not require that any proposed amendments or modifications to the title or submission clause be submitted to the board at least twelve days prior to the hearing. Proposed additions or deletions from the title and submission clause may be offered by any registered elector during the public hearing or rehearing before the board. In re Proposed Initiated Constitutional Amendment, 877 P.2d 329 (Colo. 1994).

"Substantial compliance" is the standard by which to judge compliance with the fiscal impact information filing requirements of subsection (3)(a). Invalidation of the board's actions when the fiscal impact information was filed five minutes late, then refiled three hours later to correct a calculation error, would impermissibly infringe on the fundamental right of initiative. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000) (decided under law in effect prior to 2000 amendment).

The purpose of the title setting process is to ensure that person reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment. In re Title, Ballot Title and Submission Clause, 910 P.2d 21 (Colo. 1996).

Applied in Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

II. FILING.

The filing of a petition to initiate a measure under the initiative and referendum statute is a ministerial act, and the secretary of state has discretion in the first instance to determine its sufficiency to entitle it to be filed. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938) (decided under former law).

III. STATUTORY BOARD.

It is the duty of those to whom the duty is assigned to prepare a title to an initiated measure to use such language as shall correctly and fairly express the true intent and meaning of the proposal to be submitted to the voters. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

But the action of the statutory board empowered to fix a ballot title and submission clause is presumptively valid. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); In re Proposed Initiative "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994); In re Proposed Initiative 1997-1998 No. 75, 960 P.2d 672 (Colo.

1998); In re Proposed Initiative 1997-1998 No. 105, 961 P.2d 1092 (Colo. 1998); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

And those who contend to the contrary must show wherein the assigned title does not meet the statutory requirement. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

The reason being that, under our system of government, the resolution of these questions, when the formalities for submission have been met, rests with the electorate. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

Title board had discretion to set the titles and summary of proposed initiative despite proponents' failure to indicate all of the differences between the original and final versions of the measure submitted to the secretary of state. *Matter of Prop. Init. Const. Amend. 1996-3*, 917 P.2d 1274 (Colo. 1996).

Board was created by statute to assist the people in the implementation of their right to initiate laws. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984).

Deputy attorney general. Because the title board is created by statute, the attorney general may designate, pursuant to § 24-31-103, a deputy to serve in her place. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Delegation. Because the title board is created by statute, the attorney general, pursuant to § 24-31-103, and the secretary of state, pursuant to § 24-21-105, may designate deputies to serve in their place. *Matter of Title, Ballot Title & Sub. Cl.*, 900 P.2d 121 (Colo. 1995).

The provisions of this statute, rather than those of the Administrative Procedure Act, govern the Board's action in designating and fixing the title, ballot title and submission clause, and summary of a proposed initiative measure. In re Proposed Initiative Entitled W.A.T.E.R., 831 P.2d 1301 (Colo. 1992).

Plaintiff has a liberty right to challenge the decision of the title board. This section and § 1-40-101 insufficiently provide for the notice required by the United States Constitution to protect this liberty interest, thereby depriving plaintiff of her constitutional rights. *Montero v. Meyer*, 790 F. Supp. 1531 (D. Colo. 1992).

As to all initiatives and referenda hearings governed by this section occurring after April 27, 1992, defendants are ordered to publish pre-hearing and post-hearing notices to electors at least sufficient to meet the fair notice requirements of due process of law under the Fourteenth Amendment to the United States Constitution. *Montero v. Meyer*, 790 F. Supp. 1531 (D. Colo. 1992).

Neither the secretary of state nor any reviewing court should be concerned with the merit or lack of merit of a proposed constitutional amendment. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

And a board acts wisely in refusing to use words in a title which would tend to color the merit of the proposal on one side or the other. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

The burden of proving procedural noncompliance rests with the petitioner, not with the proponents of the initiative. A presumption exists that the secretary of state properly determined the sufficiency of the filing of a petition to initiate a measure. Because the petitioner has not shown any defect in the proceeding that would destroy the board's jurisdiction in the matter, the petitioner's jurisdictional challenge is rejected. In re *Petition on Campaign and Political Finance*, 877 P.2d 311 (Colo. 1994).

Board is not required to give opinion regarding ambiguity of a proposed initiative, nor is it necessary for the board to be concerned with legal issues which the proposed initiative may create. *Matter of Title, Ballot Title, Etc.*, 797 P.2d 1275 (Colo. 1990).

Task of the board is to provide a concise summary of the proposed initiative, focusing on the most critical aspects of the proposal, not simply to restate all of the provisions of the proposed initiative. Board not required to include every aspect of a proposal in the title and submission clause. In re *Ballot Title 1999-2000 No. 235(a)*, 3 P.3d 1219 (Colo. 2000).

Board may be challenged when misleading summary of amendment prejudicial. A misleading summary of the fiscal impact of a proposed amendment is likely to create an unfair prejudice against the measure and is a sufficient basis, under this section, for challenging the board's action. In re *An Initiated Constitutional Amendment*, 199 Colo. 409, 609 P.2d 631 (1980).

Request for agency assistance at board's discretion. The decision of whether and from which of the two state agencies to request information is within the discretion of the board. *Spelts v. Klausung*, 649 P.2d 303 (Colo. 1982).

Technical correction of proposed initiative permitted. Allowing a technical correction of the proposed initiative to conform with the intent of the proponents does not frustrate the purpose of the statute. *Spelts v. Klausung*, 649 P.2d 303 (Colo. 1982).

Purpose of statutory time table for meetings of initiative title setting review board is to assure that the titles, submission clause, and summary of an initiated measure are considered promptly by the board well in advance of the date by which the signed petitions must be filed with the secretary of state. In re *Second Initiated Constitutional Amendment*, 200 Colo. 141, 613 P.2d 867 (1980); *Matter of Title Concerning Sch. Impact Fees*, 954 P.2d 586 (Colo. 1998).

Section not frustrated by next-day continuance of statutory date for last meeting. A continuance to the next day following the statutory date for the last meeting in order to comply fully with other statutory requirements does not frustrate the purpose of this section. In re *Second Initiated Constitutional Amendment*, 200 Colo. 141, 613 P.2d 867 (1980).

Initiative did not qualify for November 1997 election. The requisite signatures had to be filed in the first week of August, but the title setting was not until the third week in that month and the board could not meet to consider the initiative before the third Wednesday in May

of 1998. Matter of Title, Ballot Title for 1997-98 No. 30, 959 P.2d 822 (Colo. 1998).

Board had the authority to set a title, ballot title and submission clause, and summary for the proposed constitutional amendment at issue, but the question of the board's jurisdiction to set titles for a ballot issue in an odd-numbered year was premature, as the secretary of state, not the board, has the authority to place measures on the ballot. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Board had the authority to set the titles and summary of an initiative filed June 20, 1997, because the measure was eligible, at the earliest, for placement on the ballot in the November 1998 general election. In re Initiative #25A Concerning Housing Unit Construction Limits, 954 P.2d 1063 (Colo. 1998).

Hearings on motions to reconsider. Even in odd numbered years, hearings on motions to reconsider decisions entered during the last meeting in May must be held within 48 hours of filing of the motion. *Byrne v. Title Bd.*, 907 P.2d 570 (Colo. 1995); Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

When board may hold meetings. Under this section, the title setting board is subject to two specific prohibitions with regard to the timing of its meetings: (1) The board may not meet between an election and the first Wednesday in December in any year in which an election is held, and (2) the board may not meet after the third Wednesday in May to consider measures that will be voted on in the upcoming November election. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Meetings in July and August are proper when considering titles for a measure that will not be placed on the ballot until November of the following year. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Actions of state officers under this statute upheld. *Bauch v. Anderson*, 178 Colo. 308, 497 P.2d 698 (1972).

The board did not intrude on the jurisdiction of the supreme court by correcting two transcription errors in the summary after the matter was on appeal before the court. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

IV. TITLE; BALLOT TITLE AND SUBMISSION CLAUSE.

A. Sufficiency of Titles.

1. In General.

The purpose of the title-setting process is to ensure that both the persons reviewing an initiative petition and the voters are fairly and succinctly advised of the import of the proposed law. In re Proposed Initiative on Education Tax Refund, 823 P.2d 1353 (Colo. 1991); Matter of Title, Ballot Title & S. Clause, 872 P.2d 698 (Colo. 1994).

Initiated measure's title, as set by review board, must be proper and fair and must correctly and

fairly express the true intent and meaning of the proposed measure. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Ballot title shall correctly and fairly express the true intent and meaning of the proposed measure and shall unambiguously state the principle of the provision sought to be added, amended, or repealed. In re Proposed Initiative for 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The titles must be fair, clear, accurate, and complete, but they need not set out every detail of the initiative. Court reviews titles set by the board with great deference and will only reverse the board's decision if the titles are insufficient, unfair, or misleading. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

In fixing titles and summaries, the board's duty is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice. In re Ballot Title 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

It is not the court's function to write the best possible titles. Only if the Board's chosen language is clearly inaccurate or misleading will the court reverse it. Nor is it the court's function to speculate on the future effects the initiative may have if it is adopted. Whether the initiative will indeed have the effect claimed by petitioners is beyond the scope of the court's review. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Title and summary fail to convey to voters the initiative's likely impact on state spending on state programs, therefore, they may not be presented to voters as currently written. Title and summary are not clear perhaps because the original text of the proposed initiative is difficult to comprehend. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

In approaching the question as to whether a title is a proper one, all legitimate presumptions should be indulged in favor of the propriety of an attorney general's actions. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958); Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993).

And if reasonable minds may differ as to the sufficiency of a title, the title should be held to be sufficient. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

Only in a clear case should a title so prepared be held insufficient. *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958).

Burden for invalidating an amendment because of an alleged misleading ballot title, after adoption by the people in a general election, is heavy since the general assembly has provided procedures for challenging a ballot

title prior to elections. Unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have been different, the challenge will fail. *City of Glendale v. Buchanan*, 195 Colo. 267, 578 P.2d 221 (1978).

And under the provisions of this section to the effect that an initiative petition shall contain a "submission clause" before being signed by electors, a petition which contains a ballot title together with the words "yes" and "no" and blank spaces opposite thereto, may be deemed to comply with the requirements of this section concerning submission clauses. *Noland v. Hayward*, 69 Colo. 181, 192 P. 657 (1920) (decided under former law).

The board need not and cannot describe every feature of a proposed measure in the titles and submission clause. In re Proposed Initiative Concerning State Pers. Systems, 691 P.2d 1121 (Colo. 1984); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

To require an item by item paraphrase of the proposed constitutional amendment or statutory provision would undermine the intended relatively short and plain statement of the board that sets forth the central features of the initiative. The aim is to capture, succinctly and accurately, the initiative's plain language to enable informed voter choice. *Matter of Title, Ballot Title for 1997-98 No. 62*, 961 P.2d 1077 (Colo. 1998).

Title board not required to include every aspect of a proposal in the title and submission clause, to discuss every possible effect, or provide specific explanations of the measure. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Board has discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause. *Matter of Title, Ballot Title & S. Clause*, 875 P.2d 207 (Colo. 1994).

The board is charged with the duty to act with utmost dedication to the goal of producing documents which will enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121 (Colo. 1984); *Matter of Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Duty to voters is paramount. Board should not resolve all ambiguities in favor of proponents when to do so would come at the expense of other, equally important duties. Board is statutorily required to exercise its authority to protect against public confusion and reject an initiative that cannot be understood clearly enough to allow the setting of a clear title. In re Proposed Initiative 1999-2000 No. 25, 974 P.2d 458 (Colo. 1999).

The board must avoid titles for which a general understanding of a "yes" or "no" vote would be unclear. In re Proposed Initiative Concerning "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994).

Explanation of effect on existing law permitted. The board is not precluded from adopting language which explains to the signers of a petition and the voter how the initiative fits in the context of existing law, even though the specific language is not found in the text of the proposed statute. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982).

Although every possible effect need not be included. There is no requirement that every possible effect be included within the title or the ballot title and submission clause. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); *Spelts v. Klausing*, 649 P.2d 303 (Colo. 1982).

And the board is not required to explain the relationship between the initiative and other statutes or constitutional provisions. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In considering whether the title, ballot title and submission clause, and summary accurately reflect the intent of the proposed initiative, it is appropriate to consider the testimony of the proponent concerning the intent of the proposed initiative that was offered at the public meeting at which the title, ballot title and submission clause, and summary were set. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992).

Initiated measure's title will be rejected only if it is misleading, inaccurate, or fails to reflect the central features of the proposed initiative. *Matter of Ballot Title 1997-98 No. 74*, 962 P.2d 927 (Colo. 1998).

It is well established that the titles and summary of a proposed initiative need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. *Matter of Ballot Title 1997-98 No. 74*, 962 P.2d 927 (Colo. 1998).

In setting titles, the board must correctly and fairly express the true intent and meaning of the proposed initiative and must consider the public confusion that might be caused by misleading titles. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Title and summary are sufficient if a voter would not be confused about the nature of the initiative or its provisions regarding election information. Where the summary for an initiative concerning the procedures to be used to provide the public with information about a judge standing for a retention or removal election fully sets forth the information that will be provided to the public and discloses that no judicial performance commission reviews will be published, a voter would not be confused about the initiative or the provisions regarding election information. *Matter of Title, Ballot Title and Submission Clause*, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

2. Titles Held Sufficient.

The adoption of article X, section 20 of the Colorado constitution does not obligate the board to disclose every ramification of a proposed tax measure.

Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

There is no requirement that the board state the effect an initiative will have on other constitutional and statutory provisions or describe every feature of a proposed measure in the titles. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in Manitou Springs, 826 P.2d 1241 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993); Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994); In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Failure to mention existing similar statute of no effect. The failure to mention the existence of a statute addressing the same or similar subject as that of a proposed amendment does not have any effect on the acceptability of the titles, summary, and submission clause. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980).

No requirement that provisions of section to be repealed must be set out in the ballot title and submission clause. Matter of Proposed Constitutional Amendment, 757 P.2d 132 (Colo. 1988).

Where an initiative includes language that states, "This section was adopted by a vote of the people at the general election in 1998", the title board need not include this language in the summary or title. The general assembly may amend or repeal statutory provisions regardless of whether they are voter approved or not. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Board had no duty to reveal in the title, ballot title and submission clause, and summary the alleged irrepealability of initiative during a certain period where initiative did not state anywhere that it was "irrepealable" and petitioner failed to provide any evidence of proponent's intent to effect an irrepealability clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Reference does not have to be made in the ballot title to the purpose of the initiative. The fact that disability benefits were to be provided at a reasonable cost to employers was not essential for title setting purposes. The Title Setting Board is not required to describe every feature of a proposed measure in the title or submission clause. Matter of Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718 (Colo. 1994).

Subsection (3)(b) requires that conflicting ballot titles distinguish between overlapping or conflicting proposals. Petitioners' claim that the board had erred by not specifying that the proposed amendment conflicted with the Workers' Choice of Care Amendment was rejected. The court held that there was no "discernible conflict" between the two ballot titles. Matter of Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718 (Colo. 1994).

Board was not required to interpret meaning of two conflicting provisions in initiative or indicate

whether they would conflict where two conflicting amendments may be proposed or even adopted at same election and where board disclosed both provisions in the title and submission clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Although the texts of two initiatives are similar, the titles and submission clauses set by the board accurately reflect an important distinction between them. Voters comparing the titles and submission clauses for the two measures would be able to distinguish between the measures and would not be misled into voting for or against either measure by reason of the words chosen by the board. In re Proposed Initiated Constitutional Amendment, 877 P.2d 329 (Colo. 1994).

The title board's failure to include a reference to other related proposed initiatives in title and summary of initiative do not make them misleading. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Not specifying where gambling would be lawful or which city ordinances would be applicable was not essential to nor fatal to the title. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

It is not the function of the Board to disclose every possible interpretation of the language of the initiative. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

The title, submission clause, and summary must reflect the intent of the initiative as drafted. They need not reflect intentions of the proponents that are not expressed in the measure itself. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

Board is not required to give opinion regarding ambiguity of a proposed initiative, nor is it necessary for the board to be concerned with legal issues which the proposed initiative may create. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

Board is not required to consider and resolve potential or theoretical disputes or determine the meaning or application of proposed amendment. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Board's duty is merely to summarize central features of initiated measure in the title, ballot title and submission clause, and summary in a clear and concise manner. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

There is no requirement that ballot title and submission clause identify any articles or sections which are amended. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

No clear case presented for the invalidation of titles fixed by the board where the wording of the titles attributes a meaning to the text that is reasonable, although nor free from all doubt, and relates to a feature of the proposed law that is both peripheral to its central purpose and of limited temporal relevance. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984).

Titles were not insufficient for failure to contain the general subject matter of the proposed constitutional amendment or because the provisions of the proposed amendment were listed chronologically rather than in order of significance. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

The fact that the ballot title contains two separate paragraphs that are not identical does not make the ballot title ambiguous for purposes of this section. The relevant determination is whether the two paragraphs are sufficiently different such that a voter reasonably could vote in favor of the question as presented in one paragraph and yet decide to vote against the question as presented in the other paragraph. It is implausible to suggest that a voter reasonably could have considered voting in favor of one paragraph in the ballot title and against the other paragraph where the only difference between the two paragraphs is that one paragraph is slightly more detailed than the other. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994).

All three of the main tax issues were set forth in the title, submission clause, and summary with sufficient particularity to apprise voters that the proposed amendment would increase taxes on cigarettes and tobacco products. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

It was within the board's discretion to omit information from the title or submission clause regarding the creation of a citizen's commission on tobacco and health and that spending categories and required appropriations contained in the proposed amendment could only be changed by a subsequent constitutional amendment since neither were central features to the proposal. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

Absence of definitions was distinguishable from situation in In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990), since although the definitions may have been broader than common usage in some respects and narrower in others, they appeared to be included for sake of brevity and they would not adopt a new or controversial legal standard which would be of significance to all concerned with the issues surrounding election reform. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

The titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

And the board is not usually required to define a term that is undefined in the proposed measure. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A title and summary that repeat or reword much of the language of the proposed initiative and contain complex clauses are not insufficient if they fairly express the intent and meaning of the proposed initiative. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

Titles are fair, sufficient, and clear. Titles track the language of the proposed initiative. By using general language suggesting initiative limited to "tax or debt

campaigns", titles fairly put public on notice that provision applies to any election that affects taxes or the creation of public debt. Although titles do not mention "pass-through" or "pooling" provisions of proposed initiative, these provisions are not central features of the measure. Finally, because titles state that any election that violates provisions of the initiative is void, titles that fail to disclose that district must refund moneys collected in violation of initiative are not confusing, and voters would not be misled. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

3. Titles Held Insufficient.

A title and submission clause do not fairly and accurately reflect the intent and purpose of an initiative if the voters are not informed that the intent is to prevent the state courts from adopting a definition of obscenity that is broader than under the U.S. Constitution. In re Proposed Initiative on "Obscenity," 877 P.2d 848 (Colo. 1994).

Titles set by board create confusion and are misleading because they do not sufficiently inform the voter of the parental-waiver process and its virtual elimination of bilingual education as a viable parental and school district option. In re Ballot Titles 001-02 No. 21 & No. 22, 44 P.3d 213 (Colo. 2002).

Failure of title, ballot title, and submission clause to include definition of abortion which would impose a new legal standard which is likely to be controversial made title, ballot title, and submission clause deficient in that they did not fully inform signers of initiative petitions and voters and did not fairly reflect the contents of the proposed initiative. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990); In re Proposed Initiative Concerning "Automobile Insurance Coverage", 877 P.2d 853 (Colo. 1994).

Titles set by the board were insufficient in that they did not state that the proposal would impose mandatory fines for willful violations of the campaign contribution and election reforms, they did not state that the proposal would prohibit certain campaign contributions from certain sources, they did not state that the proposal would make both procedural and substantive changes to the petition process, and they did not specifically list the changes to the numbers of seats in the house of representatives and the senate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Ballot title was misleading because of the order in which the material was presented. The court held that in order to correctly and fairly express the true intent and meaning of the initiative all provisions concerning the city of Antonito must be grouped together. Further, the board could arrange the title to reflect the subject matter at issue. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

Repetition of the language from the initiative itself in the title and submission clause does not necessarily ensure that the voters will be apprised of the true intent and purpose of the initiative. In re Proposed

Initiative on "Obscenity," 877 P.2d 848 (Colo. 1994); In re Ballot Titles 2001-02 No. 21 & No. 22, 44 P.3d 213 (Colo. 2002).

Where the board deferred to the proponents' statements of intent and attempted to set a title reflective of such intent, but the record showed that the board itself did not fully understand the measure, title was not sufficiently clear and board was directed to strike the title and return the measure to the proponents. In re Proposed Initiative 1999-2000 No. 25, 974 P.2d 458 (Colo. 1999).

Ballot title found insufficient. The title "Petition Procedures" fails to convey the fact that the initiative would create numerous "fundamental rights" retroactively to 1990 unrelated to procedural changes. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Ballot title found insufficient and misleading. In re Tax Reform, 797 P.2d 1283 (Colo. 1990).

In a proceeding involving the sufficiency of a ballot title and submission clause for a proposed initiative amendment to the state constitution, it was held that the title as fixed by the statutory board was deficient as indicated, and the title was amended in conformity with a stipulation of the parties, and as amended, approved. Jennings v. Morrison, 117 Colo. 363, 187 P.2d 930 (1947).

Title was misleading as to the true intent and meaning of the proposed initiative where the title and summary did not contain any indication that the geographic area affected would have been limited, and therefore there would be a significant risk that voters statewide would have misperceived the scope of the proposed initiative. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Title was misleading because combination of language specifying that parents of non-English speaking children could opt out of an English immersion program in favor of a bilingual education program and lack of language specifying that school districts would be prohibited from requiring schools to offer bilingual education programs had the potential to mislead voters into thinking parents would have a choice between English immersion and bilingual education programs when bilingual programs actually might not be available in many instances. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Title board directed on remand to fix the ballot title and submission clause of proposed initiatives where the language of the designated titles is inconsistent with their summaries. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000).

The title and summary on an initiative concerning judicial personnel held unclear. Title and summary contain contradictory language regarding the definition of personnel, and a voter would not be able to determine which judicial personnel were included in the initiative. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The title and summary on an initiative concerning the procedure used to remove a judge held unclear. Language in the summary, which was repeated

verbatim from the language of the initiative but was not explained or analyzed in the summary, creates confusion and ambiguity and is therefore insufficient. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

B. Submission Clause.

To submit means to present and leave to the judgment of the qualified voters. Noland v. Hayward, 69 Colo. 181, 192 P. 657 (1920).

The submission clause is the one that appears on the ballot at the election and upon which the electorate may vote for or against the proposed amendment. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960); Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960).

But the expression "submission clause" was used in referring to a ballot title or to the matter which went upon the ballot and which was before the electors at the time they cast their respective votes for or against the initiated measure. In People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Nevertheless, it should fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

C. Catch Phrases.

"Catch phrases," or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against an initiated constitutional amendment, should be carefully avoided by the statutory board in writing a ballot title and submission clause. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

The title board should avoid the use of catch phrases or slogans in the title, ballot title and submission clause, and summary of proposed initiatives. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

"Catch phrases" are forbidden in ballot titles. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And where a catch phrase was used in the submission clause by the statutory board in fixing a submission clause and ballot title to a proposed constitutional amendment, the supreme court, on review, remanded the matter to the board with instruction to revise the submission clause by elimination of the catch phrase. Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960); Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

Words "rapidly and effectively as possible" are a prohibited "catch phrase" because they mask the policy question of whether the most rapid and effective way to teach English to non-English speaking children is through an English immersion program and tip the substantive debate surrounding the issue to be submitted to the electorate. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

The words "adjusted net proceeds" and "adjusted gross proceeds" are not prohibited "catch phrases". The fact that such phrases were not defined in the initiative reflected the proponent's intent that the legislature interpret their meaning. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

The phrase "be on" the water is not misleading and is sufficiently clear. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

Because the proposed amendment contains no definition of the term "strong public trust doctrine", such a definition must await future judicial construction and cannot appropriately be included in the title or submission clause. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

The phrase "refund to taxpayers" is not an inherently prohibited catch phrase. The term "refund" may be characterized inaccurately when read in isolation. When read in the context in which the term is used in the titles and summary and in the proposed initiative, however, the special sense of "refund" is adequately clarified. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Deterioration of a group of terms into an impermissible catch phrase is an imprecise process. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Use of the phrase "to preserve . . . the social institution of marriage" in titles and summaries of measures to recognize marriage between a man and a woman as valid does not constitute an impermissible catch phrase that may create prejudice in violation of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

The phrase "concerning the management of growth" is neutral, with none of the hallmarks that have characterized catch phrases in the past. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

"Term limits" is not a catch phrase. In re Ballot Title 2005-2006 No. 75, 138 P.3d 267 (Colo. 2006).

D. When Ballot Title and Submission Clause Fixed.

The titles and submission clause of an initiated measure were fixed and determined within the meaning of this section on the date that the three designated officials convened and fixed a title, ballot title and submission clause, and not on the date that the right of appeal from their decision expired. Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

E. Brevity Required.

Ballot title and submission clause of proposed initiative measure must be brief. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

The board is given considerable discretion in resolving the interrelated problems of length, complexity, and clarity in designating a title and submission clause. In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

If a choice must be made between brevity and a fair description of essential features of a proposal, where a complex measure embracing many different topics is involved and the titles and summary cannot be abbreviated by omitting references to the measure's salient features, the decision must be made in favor of full disclosure to the registered electors. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Ballot title and submission clause did not comply with the brevity requirement where the ballot title and submission clause for proposed constitutional amendment, as fixed by the administrative board, contained 369 words while the proposed amendment itself contained but 505 words. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

F. Scope of Review.

The court's scope of review is limited to ensuring that the title, ballot title and submission clause and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

There is a presumption in favor of decisions made by the title board. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Board's actions are presumptively valid, and this presumption precludes the court from second-guessing every decision the board makes in setting a title. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

The court gives great deference to the board's drafting authority. Matter of Title, Ballot Title for 1997-98 No. 80, 961 P.2d 1120 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

It is not the function of the court to rewrite the titles and summary to achieve the best possible statement of the proposed measure's intent, and the court will reverse the board's action in setting the titles only when the language chosen is clearly misleading. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The title board's function is extremely important in light of the court's limited scope of review of the board's actions, and the court will not address the merits of a proposed initiative, interpret its language, or predict its application. In re Proposed Election Reform Amend., 852 P.2d 28 (Colo. 1993); In re Proposed Initiative on Fair Treatment of Injured Workers, 873 P.2d 718 (Colo. 1994); In re Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Court will not rewrite the titles or submission clause for the board. Also, the court will reverse the

board's action in preparing the title or submission clause only if the title and submission clause contain a material omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998); In re Ballot Title 1990-2000 No. 29, 972 P.2d 257 (Colo. 1999).

Not within the purview of the court to determine the efficacy, construction, or future application of an initiative in the process of reviewing the action of the title board in setting titles for a proposed initiative. Such matters are more appropriately addressed in a proper case if the voters approve the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Upon review, supreme court treats actions of board as presumptively valid. Supreme court will not address the merits of a proposed initiative, interpret its language, or predict its application. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Presumption of validity precludes supreme court from second-guessing every decision board makes in setting titles. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Supreme court's review of title board's actions is limited, and the court will not address the merits of a proposed initiative or construe the future legal effects of an initiative. The court will, however, when necessary, characterize a proposal sufficiently to enable review of the board's actions and to determine whether the initiative contains incongruous or hidden purposes or bundles incongruous measures under a broad theme. In re Ballot Title 2005-2006 No. 55, 138 P.3d 273 (Colo. 2006).

V. SUMMARY AND FISCAL IMPACT STATEMENT.

Impartiality required in summary. The summary prepared by the board must be true and impartial statement of intent of proposed law and must not be an argument, nor likely to create prejudice either for or against the measure. In re Branch Banking Initiative, 200 Colo. 85, 612 P.2d 96 (1980); In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausung, 649 P.2d 303 (Colo. 1982).

And summary is to include estimate of any fiscal impact upon the state or any of its political subdivisions with an explanation thereof. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausung, 649 P.2d 303 (Colo. 1982).

Unless fiscal impact cannot be determined. Where the fiscal impact upon local government could not be determined because of the variables involved, a definitive statement concerning fiscal impact is not required. Spelts v. Klausung, 649 P.2d 303 (Colo. 1982).

School districts and school boards are "political subdivisions of the state" as to which fiscal

impact is to be estimated. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Purpose of including fiscal impact statement in the summary is to inform the electorate of fiscal implications of proposed measure. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

In formulating a fiscal impact statement, the board is not limited to information submitted by the department of local affairs or the office of state planning and budgeting. Nor is the board required to accept at face value the information provided to it. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

Faced with conflicting evidence regarding the fiscal impact, the board's determination that the proposed measure "may" have a negative fiscal impact on certain local governments was consistent with its statutory authority. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

The fiscal impact statement was adequate, and the title board was within its discretion in not speculating in that statement about whether the transportation commission would impose tolls. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

The fiscal impact statement adequately described impact because it estimated current costs, included a one time cost for a water pump prior to the effective date of the initiative, included no speculation of the water district's obligation to the department of wildlife for fish and wildlife expenses, and provided an estimate for possible litigation costs because of the measure. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Fiscal impact statement not incomplete or inaccurate because it did not include any long range estimate of the costs of elections through the year 2013. The title board was not required to provide a further elaboration of the costs through the year 2013, even though the department of local affairs presented an estimate in a letter. The board had discretion to omit the estimate from the fiscal impact statement. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

The board is not required to determine the exact fiscal impact of each proposed measure; if the board finds that the proposed initiative will have a fiscal impact on the state or any of its political subdivisions, the summary must include an estimate and explanation. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

The board may properly exercise its judgment in concluding that the fiscal impact upon local government cannot be determined because of the variables involved. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board may properly find that certain costs are indeterminate because of the variables and uncertainties involved. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The title board is not required to spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. Only where the language chosen is clearly misleading will the court revise the title

board's formulation. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

Omission of a sentence describing the proposed initiative's legislative declaration does not render the summary clearly misleading to the electorate. In re Ballot Title 1999-2000 No. 265, 3 P.3d 1210 (Colo. 2000).

A separate explanation of the fiscal impact of a measure is not required when the fiscal impact cannot be reasonably determined from the materials submitted to the board due to the variables or uncertainties inherent in the particular issue. In re Title Pertaining to Tax Reform, 797 P.2d 1283 (Colo. 1990); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994); In re Proposed Initiative on "Trespass - Streams With Flowing Water", 910 P.2d 21 (Colo. 1996); Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Given the disparate conclusions regarding the fiscal impact of the measure, the board acted within its authority in making the decision to include in the summary the statement that the net effect of the changes on state or local governments was not known. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

If provisions of measure do not produce a separate and conflicting impact and the aggregate impact is known, each provision of the proposed amendment need not be addressed individually in the statement of fiscal impact. Where the board cannot determine the aggregate fiscal impact of a proposed measure, but has adequate information to assess the impact of a particular provision, the board should state with specificity which provision will have fiscal impacts that are capable of being estimated and which are truly indeterminate. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Explanation of fiscal impact not required given the complexity of the issues and uncertainty expressed by the department of revenue. The board's conclusion that the fiscal impact was indeterminate was reasonable. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

Lack of specificity held justified. The Board has no independent fact-finding ability and its choice of language was judicious and within its authority. The fiscal impact could not reasonably be determined because of inherent uncertainties in the text of the amendment. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

Statement of fiscal impact was insufficient since, although the board was not required to include a definitive estimate of any fiscal impact on the state or its political subdivisions when that impact cannot be determined because of the variables involved, where the indeterminacy resulted from the multitude of provisions having separate and sometimes conflicting fiscal impacts producing an indeterminate aggregate impact and the board had sufficient information to assess the fiscal impact of each provision in isolation, the board should state with specificity which provisions will have fiscal impacts which are capable of being estimated, and which are truly indeterminate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Board has discretion in exercising its judgment in how to best communicate that a proposed measure will have a fiscal impact on government without creating prejudice for or against the measure. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Statement of fiscal impact was insufficient where it did not include estimates of the initiative's impact on school boards. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Fiscal impact statement was inaccurate description of the fiscal impact of initiative where the office of state planning and budgeting prepared two cost estimates based on two possible scenarios. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Request for agency assistance at board's discretion. The decision of whether and from which of the two state agencies to request information is within the discretion of the board. Spelts v. Klausung, 649 P.2d 303 (Colo. 1982).

Summary need not mention the effect of the amendment on an existing statute addressing the same or a similar subject as the proposed amendment. In re Mineral Prod. Tax Initiative, 644 P.2d 20 (Colo. 1982).

Board is not required to explain meaning or potential effects of proposed initiative on the present statutory scheme in the summary. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board is not required to provide lengthy explanations of every portion of a proposed constitutional amendment as overly detailed titles and submission clauses could by their very length confuse voters. In re Proposed Initiative Concerning State Personnel Systems, 691 P.2d 1121 (Colo. 1984).

Mere ambiguity of a summary, if not clearly misleading, does not require disapproval by court. In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984).

Board may be challenged when misleading summary of amendment prejudicial. A misleading summary of the fiscal impact of a proposed amendment is likely to create an unfair prejudice against the measure and is a sufficient basis, under this section, for challenging the board's action. In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980).

The titles and summary were not misleading since they tracked the language of the initiative, and any problems in the interpretation of the measure or its constitutionality were beyond the functions assigned to the title board and outside the scope of the court's review of the title board's actions. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Proposed initiative violates the single-subject requirement because it (1) provides for tax cuts and (2) imposes mandatory reductions in state spending on state programs. Matter of Proposed Initiative 1997-98 No. 86, 962 P.2d 245 (Colo. 1998).

Use of the word "of" in the initiative summary instead of the word "by" does not create confusion on how directors of a board are selected. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Failure of title and summary to specify which taxpayers would receive a refund if one is necessary does not render the title or summary confusing. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Title summary not misleading because it identified uncertainties of the effect of the measure by

noting that a surplus may be created by the payments under the initiative and any surplus may be refunded to the taxpayers under TABOR, article X, § 20, of the Colorado Constitution. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Section 1 (5.5) of article V and section 2 (3) of article XIX of the state constitution require that every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly be limited to a single subject, which shall be clearly expressed in its title;

(b) Such provisions were referred by the general assembly to the people for their approval at the 1994 general election pursuant to Senate Concurrent Resolution 93-4;

(c) The language of such provisions was drawn from section 21 of article V of the state constitution, which requires that every bill, except general appropriation bills, shall be limited to a single subject, which shall be clearly expressed in its title;

(d) The Colorado supreme court has held that the constitutional single-subject requirement for bills was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur, and the intent of the general assembly in referring to the people section 1 (5.5) of article V and section 2 (3) of article XIX was to protect initiated measures and referred constitutional amendments from similar practices;

(e) The practices intended by the general assembly to be inhibited by section 1 (5.5) of article V and section 2 (3) of article XIX are as follows:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

(2) It is the intent of the general assembly that section 1 (5.5) of article V and section 2 (3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

(3) It is further the intent of the general assembly that, in setting titles pursuant to section 1 (5.5) of article V, the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills.

Source: L. 94: Entire section added, p. 73, § 1, effective January 19, 1995.

Editor's note: Section 2 of chapter 22, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 93-004, enacted at the First Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 93-004 was January 19, 1995.

ANNOTATION

Law reviews. For article, "The Single-Subject Requirement For Initiatives", see 29 Colo. Law. 65 (May 2000).

In determining whether a proposed measure contains more than one subject, the court may not interpret the language of the measure or predict its application if it is adopted. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In order to violate the single subject requirement, the text of the measure must relate to more than one subject and have at least two distinct and separate purposes which are not dependent upon or connected with each other. The single subject requirement is not violated if the matters included are necessarily or properly connected to each other. In re

Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

In order to pass constitutional muster, a proposed initiative must concern only one subject. In other words, it must effectuate or carry out only one general object or purpose. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

The intent of the requirement that an initiative be limited to a single subject is to ensure that each proposal depends on its own merits for passage. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996); Matter of Title, Ballot Title for 1997-98 No. 105, 961 P. 2d 1093 (Colo. 1998).

Subsection (1)(a)(I) prohibits the joinder of incongruous subjects in the same petition. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P. 2d 1093 (Colo. 1998).

The intent of the single-subject requirement is to prevent voters from being confused or misled and to ensure that each proposal is considered on its own merits. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement is not violated simply because an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper

relationship to the substance of the initiative, they are not a separate subject. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A proposed measure that tends to effect or to carry out one general purpose presents only one subject. Consequently, minor provisions necessary to effectuate the purpose of the measure are properly included within its text. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Just because a proposal may have different effects or that it makes policy choices that are not invariably interconnected does not mean that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected. Here, the initiative addresses numerous issues in a detailed manner. However, all of these issues relate to the management of development. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

To evaluate whether or not an initiative effectuates or carries out only one general object or

purpose, supreme court looks to the text of the proposed initiative. The single-subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous". Stated another way, the single-subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other". Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the single-subject test, subject of the initiative should also be capable of being expressed in the initiative's title. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

The fact that provisions of measure may affect more than one statutory provision does not itself mean that measure contains multiple subjects. Where initiative requiring background checks at gun shows also authorizes licensed gun dealers who conduct such background checks to charge a fee, the initiative contains a single subject. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

Single-subject requirement eliminates the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures that might not otherwise be approved by voters on the basis of the merits of those discrete measures. In re Petitions, 907 P.2d 586 (Colo. 1995); In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

A proposed measure impermissibly includes more than one subject if its text relates to more than one subject and if the measure has at least two distinct and separate purposes that are not dependent upon or connected with each other. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Neither this section nor §1(5.5) of article V of the state constitution creates any exemptions for initiatives that attempt to repeal constitutional provisions. Also, no special permission exists for initiatives that seek to address constitutional provisions adopted prior to the enactment of the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The term "measure" includes initiatives that either enact or repeal. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

In cases of repeal, the underlying constitutional provision to be repealed must be examined in order to determine whether the repealing and reenacting initiative contains a single subject. If a

provision contains multiple subjects and an initiative proposes to repeal the entire underlying provision, then the initiative contains multiple subjects. On the other hand, if an initiative proposes anything less than a total repeal, it may satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

Title-setting board has no duty to advise proponents concerning possible solutions to a single-subject violation. Comment by the board is within its sound discretion; requiring comment would unconstitutionally expand the board's authority and shift initiative-drafting responsibility from proponents to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

If the title-setting board rejects an initiative for violating the single-subject requirement, then proponents may pursue one of two courses of action. They may either (1) commence a new review and comment process, or (2) present a revised title to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

Single-subject requirement for ballot initiatives met where provisions in initiative make reference to the initiative's subject and the provisions are sufficiently connected to the subject. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996).

An election provision in a measure does not constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Title board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary. In reviewing actions of the title board, court must liberally construe the single-subject and title requirements for initiatives. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996); Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative contains only one subject. Although initiative is comprehensive, all of its numerous provisions relate to the single subject of reforming petition rights and procedures. Matter of Petition for Amend. to Const., 907 P.2d 586 (Colo. 1995).

Proposed initiative that applies a \$60 tax credit contains only one subject, even though it applies the credit to more than one tax and requires the state to replace monthly local government revenues lost because of the tax credit. Matter of Proposed Petition for an Amendment to the Constitution Adding Paragraph (d) Section (8) of Section 20 of Article X (Amend TABOR No. 32), 908 P.2d 125 (Colo. 1995).

The texts of the initiatives encompass the single subject of gaming activities conducted by nonprofit organizations. The initiatives detail what games of chance may be conducted, who may conduct such games, and how such games may be conducted. In re Proposed Init. Bingo-Raffle Lic. (I), 915 P.2d 1320 (Colo. 1996).

Proposed initiative did not violate the single-subject requirement where "the public's interest in state waters" was sufficiently narrow and connected with both a "public trust doctrine" and the assignment of water use rights to the public or a watercourse. Matter of Title,

Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative did not contain more than one subject merely because it provided for alternative ways to accomplish the same result. The alternate ways were related to and connected with each other and plainly did not violate the single-subject requirement. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Initiative that assessed fees for water pumped from beneath trust lands and then allocated the pumping fees for school finance was not considered two subjects by the court because the theme of the purpose of state trust lands and the educational recipient provide a unifying thread. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Proposed initiative concerning uniform application of laws to livestock operations was upheld without opinion against challenges on basis of single-subject requirement and on other grounds. Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

Measure to recognize marriage between a man and a woman as valid does not contravene the single subject requirement of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

Proposed initiative that employs a growth formula limiting the rate of future development, delineates a system of measurement to determine the "base developed" area of each jurisdiction, allows for alternative treatment of commenced but not completed projects, excludes low-income housing, public parks and open space, and historic landmarks, and establishes a procedure for exemptions does not violate the constitutional prohibition against single subjects. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Proposed initiative that prohibits school districts from requiring schools to provide bilingual education programs while allowing parents to transfer children from an English immersion program to a bilingual program does not contain more than one subject. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Enforcement provision under which election will be declared void and revenues collected pursuant to election will be refunded is directly tied to initiative's purpose of eliminating pay-to-play contributions and, therefore, is not a separate subject. Clause in question should be interpreted as nothing more than an enforcement or implementation clause that does nothing more than incorporate inherent right of taxpayers to challenge tax, spending, or bond measures when they have standing to do so. Thus, enforcement provision is not a separate subject but rather is tied directly to initiative's single subject. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

Proposed initiative contains more than one subject. Citizen initiative that retroactively creates substantive fundamental rights in charter and constitutional amendments approved after 1990, requires the word "shall" in such amendments be mandatory regardless of the context, establishes standards for judicial review of filed petitions, provides that challenges to petitions can be upheld only if beyond a reasonable doubt by a unanimous

supreme court, and contains other substantive and procedural provisions relating to recall, referendum, and initiative petitions contains more than one subject. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Proposed initiative that establishes a tax credit and sets forth procedural requirements for future ballot titles contains more than one subject. Matter of Title, Ballot Title & Sub. Cl., 900 P.2d 121 (Colo. 1995).

Initiative that contains both tax cuts and mandatory reductions in state spending on state programs violates the single subject requirement. Matter of Title, Ballot Title for 1997-98 No. 88, 961 P.2d 1106 (Colo. 1998).

Proposed initiative that repealed the constitutional requirement that each judicial district have a minimum of one district court judge; deprived the city and county of Denver of control over Denver county court judgeships; immunized from liability persons who criticize a judicial officer regarding his or her qualifications; and altered the composition and powers of the commission on judicial discipline contains more than one subject. Matter of Title, Ballot Title for 1997-98 No. 64, 960 P.2d 1192 (Colo. 1998); Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Proposed initiative that also proposed to make all municipal court judges subject to its term of office and retention provisions and expanded the jurisdiction of the commission on judicial discipline to include municipal court judges contains more than one subject. Matter of

Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Proposed initiative that creates a tax cut, imposes new criteria for voter approval of tax, spending, and debt increases, and imposes likely reductions in state spending on state programs contains at least three subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

Proposed initiative that creates a tax cut and imposes new criteria for voter approval of tax, spending, and debt increases contains multiple subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

Proposed initiative has more than single subject and, therefore, is unconstitutional. Initiative presents multiple subjects: (1) Time limits for tax measures; (2) time limits for public debt authorizations; and (3) time limits for voter-authorized relief from spending limits. While voters may well be receptive to a broadly applicable 10-year limitation upon the duration of any tax increases, they may not realize that they will be simultaneously limiting their ability to incur multiple-fiscal year district debt obligation to fund public projects. Voters would also be limiting prospectively the duration of all future ballot issues designed to provide relief from TABOR's wholly independent spending caps. Voters are entitled to have each of these separate subjects considered upon its own merits. In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

1-40-107. Rehearing - appeal - fees - signing. (1) Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or who is not satisfied with the titles and submission clause provided by the title board and who claims that they are unfair or that they do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for a rehearing with the secretary of state within seven days after the decision is made or the titles and submission clause are set. The motion for rehearing shall be heard at the next regularly scheduled meeting of the title board; except that, if the title board is unable to complete action on all matters scheduled for that day, consideration of any motion for rehearing may be continued to the next available day, and except that, if the titles and submission clause protested were set at the last meeting in May, the motion shall be heard within forty-eight hours after the expiration of the seven-day period for the filing of such motions.

(2) If any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment, together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within five days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

(3) The secretary of state shall be allowed a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for certifying a record of any proceedings before the title

board. The clerk of the supreme court shall receive one-half the ordinary docket fee for docketing any such cause, all of which shall be paid by the parties desiring a review of such proceedings.

(4) No petition for any initiative measure shall be circulated nor any signature thereto have any force or effect which has been signed before the titles and submission clause have been fixed and determined as provided in section 1-40-106 and this section.

(5) In the event a motion for rehearing is filed in accordance with this section, the period for filing a petition in accordance with section 1-40-108 shall not begin until a final decision concerning the motion is rendered by the title board or the Colorado supreme court; except that under no circumstances shall the period for filing a petition be extended beyond three months prior to the election at which the petition is to be voted upon.

(6) (Deleted by amendment, L. 2000, p. 1622, § 5, effective August 2, 2000.)

(7) (Deleted by amendment, L. 95, p. 432, § 5, effective May 8, 1995.)

Source: **L. 93:** Entire article amended with relocations, p. 680, § 1, effective May 4. **L. 95:** (1) and (7) amended, p. 432, § 5, effective May 8. **L. 98:** (2) amended, p. 635, § 9, effective May 6. **L. 2000:** (1), (2), (4), and (6) amended, pp. 1621, 1622, §§ 2, 5, effective August 2; (6) amended, p. 297, § 1, effective August 2. **L. 2004:** (1) amended, p. 756, § 2, effective May 12.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-101 (3), subsection (3) was formerly numbered as section 1-40-103 (1), subsection (4) was formerly numbered as section 1-40-103 (2), subsection (5) was formerly numbered as section 1-40-102 (3)(b), subsection (6) was formerly numbered as section 1-40-101 (4), and subsection (7) is new. The former section 1-40-107 was relocated to section 1-40-113.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 32; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, §§ 116, 117, 121, 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) On rehearing by the title-setting board or review by the supreme court under this section, many of the same concerns will be relevant as are relevant to the initial setting of titles under § 1-40-106. To avoid excessive duplication, most of the annotations to cases construing § 1-40-106 are not repeated here. Please see the annotations under § 1-40-106 for additional cases concerning the sufficiency of titles, and the authority and powers of the title-setting board, and the compliance of the title-setting board with statutory requirements.

(3) For additional cases concerning the initiative and referendum power, see the annotations under § 1 of article V of the state constitution.

Subsection (1) allows an objector to bring only one motion for rehearing to challenge the titles set by the title board. The title board properly denied an objector's second motion for rehearing based on lack of

jurisdiction. In re Ballot Title 1999-2000 No. 219, 999 P.2d 819 (Colo. 2000).

This section provides a special statutory process that overrides claim preclusion or law of the case principles. Consequently, the title board and the supreme court must review an initiative challenged under this section even if its language is identical to the language of a previous initiative. In re Ballot Title 2005-2006 No. 55, 138 P.3d 273 (Colo. 2006).

In a proceeding under this statute: (1) the supreme court must not in any way concern itself with the merit or lack of merit of the proposed amendment since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions must be indulged in favor of the propriety of the board's

action; and (3) only in a clear case should a title prepared by the board be held invalid. Bauch v. Anderson, 178 Colo. 308, 497 P.2d 698 (1972); In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausling, 649 P.2d 303 (Colo. 1982); In re Proposed Initiated Constitutional Amendment, 682 P.2d 480 (Colo. 1984); In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984); In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

In reviewing the board's title-setting process, the court does not address the merits of the proposed initiative and should not interpret the meaning of proposed language or suggest how it will be applied if adopted by the electorate; should resolve all legitimate presumptions in favor of the board; will not interfere with the board's choice of language if the language is not clearly misleading; and must ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993); In re Proposed Initiative Concerning "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994).

Court will not address the merits of proposed initiatives nor interpret the meaning of proposed language. It is beyond the scope of the court's review to interpret or construe the language of a proposed initiative. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

So long as the language chosen by the board fairly summarizes the intent and meaning of the proposed amendment, without arguing for or against its adoption, it is sufficient. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

The board is not required to state the effect that an initiative may have on other constitutional provisions and the initiative summary is not intended to fully educate people on all aspects of the proposed law. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

Court will not rewrite the titles or submission clause for the title board. Also, the court will reverse the title board's action in preparing the title or submission clause only if they contain a material and significant omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

And the mere fact that, after an appeal has been taken and a court has had the benefit of the additional labor bestowed upon the ballot title by counsel, a court may be able to write a better ballot title than the one prepared by an attorney general constitutes no reason for discarding his title. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Because the purpose of an appeal is not to secure for the bill the best possible ballot title, but to eliminate one that is insufficient or unfair, if it should develop that the one submitted by an attorney general is of that kind. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); In re Branch Banking Initiative, 200 Colo. 85, 612 P.2d 96 (1980); Matter of Educ. Tax Reform, 823 P.2d 1353 (Colo. 1991).

Court's function limited. It is not the function of the supreme court to rephrase the language of the summary and title in order to achieve the best possible statement of the intent of the amendment. In re Mineral Prod. Tax Initiative, 644 P.2d 20 (Colo. 1982).

Actions of the title setting review board will not be reversed just because a better title could have been adopted. Matter of Proposed Initiated Constitutional Amendment Concerning Suits Against Nongovernmental Employers Who Knowingly and Recklessly Maintain an Unsafe Work Environment, 898 P.2d 1071 (Colo. 1995).

Review limited to whether intent of initiative properly reflected. On review, the supreme court can only consider whether the titles, summary, and submission clause reflect the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the language of the proposed initiative. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausung, 649 P.2d 303 (Colo. 1982); In re Proposed Initiative on Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992); In re Proposed Initiative on Sch. Pilot Program, 874 P.2d 1066 (Colo. 1994); Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

And interpretation of initiative not permitted. It is not the function of the supreme court in the review proceeding, nor is it the board's function, to determine the meaning of the language of the initiative: A judicial interpretation of the meaning of the initiative must await an adjudication in a specific factual context. Spelts v. Klausung, 649 P.2d 303 (Colo. 1982); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Court will not rewrite the titles or submission clause for the title board. Also, the court will reverse the title board's action in preparing the title or submission clause only if they contain a material and significant omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Title language employed by the title board will be rejected only if it is misleading, inaccurate or fails to reflect the central features of the proposed measure. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Title, ballot title, and submission clause of an initiative measure were not unfair or misleading where a term was not defined that would have required detailed statutory explanation. The board's omission of a definition in its title and summary is not an abuse of discretion where the definition is complex and would be impossible to define within the title and summary of the initiative without a detailed statutory explanation, even though the term is obscure and not within the common knowledge of most voters. Matter of Title, Ballot Title for 1997-98 No. 75, 960 P.2d 672 (Colo. 1998).

Title set by the title board was misleading and inaccurate and would be modified where the intent of the proposed measure was to prohibit the modification of certain mining permits to allow the expansion of mining operations but the title could be construed as prohibiting the expansion of mining operations under an existing, unmodified mining permit. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Issues of whether initiative violated article X, section 20, of the Colorado Constitution are premature and the court will not address them since that determination would necessarily require the court to interpret its language or predict its application if adopted by the electorate. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Although this section provides for supreme court review of citizen initiatives before they are submitted to the general electorate, it does not confer jurisdiction on the supreme court to review the constitutionality of legislative referenda prior to enactment. Thus, the supreme court lacked jurisdiction to review a legislative referendum for compliance with the single-subject requirement prior to enactment of the referendum. Polhill v. Buckley, 923 P.2d 119 (Colo. 1996).

Judicial determination of retroactive application of proposed amendment. If a controversy arises in a specific factual context, then judicial determination of retroactive application may be appropriate, but it is not relevant to the determination of the accuracy of the language of the titles, summary, and submission clause of a proposed amendment. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980); In re Proposed Initiative on Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992).

Where a proposed amendment uses the term "strong public trust doctrine" but does not define it, such a definition must await future judicial construction and cannot appropriately be included in the title or submission clause. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

The board is not required to state the effect that an initiative may have on other constitutional provisions, and the court may not address the potential constitutional interpretation implications of the initiative in the court's review. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

As a general rule, court will reject the board's actions only where the language it has adopted is so inaccurate as to clearly mislead the electorate. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Burden for invalidating an amendment because of an alleged misleading ballot title, after adoption by the people in a general election, is heavy since the general assembly has provided procedures for challenging a ballot title prior to elections. Unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have been different, the challenge will fail. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

In considering whether the title, ballot title and submission clause, and summary accurately reflect the intent of the proposed initiative, it is appropriate to

consider the testimony of the proponent concerning the intent of the proposed initiative that was offered at the public meeting at which the title, ballot title and submission clause, and summary were set. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992).

Once petitioners file their petitions for review with the supreme court pursuant to subsection (2), the board loses jurisdiction to make substantive changes to the titles and summary. The board properly refused to consider a motion for rehearing filed by one opponent that raised substantive issues when the other opponents had already filed petitions for review with the supreme court; any action by the board to make substantive changes to the summary after the matter was before the supreme court on review would impermissibly intrude on the court's jurisdiction over the case. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The time for filing an appeal to a decision of the title board is five days after the board denies the motion for rehearing and not five days from the date the secretary of state certifies the documents requested for appeal. Five days from the board's denial of a motion for rehearing is final action by the board regardless of whether an appeal is filed. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

For a timely appeal, it must be filed within five days from the board's denial of a motion for rehearing and must be construed with C.A.R. 26, thus clarifying the computation of five days to exclude Saturday and Sunday. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Initiative proponents may circulate petitions for signatures after the title board has taken its final action in regard to the ballot titles and summary, pursuant to subsections (1) and (5), and while an appeal of that action to the supreme court is pending pursuant to subsection (2). Setting of titles and summary becomes a final title board action upon denial of a rehearing petition or upon expiration of the time for filing a rehearing petition with the title board. Armstrong v. Davidson, 10 P.3d 1278 (Colo. 2000).

Objector may not raise in a second motion for rehearing a challenge that the objector could have raised in the first motion for rehearing. Case-by-case analysis of the interests involved in setting the titles to an initiative is not required. In re Ballot Title 1999-2000 No. 215, 3 P.3d 447 (Colo. 2000).

Applied in Matter of Proposed Initiative 1997-98 No. 86, 962 P.2d 245 (Colo. 1998); Matter of Proposed Initiative 1997-98 No. 109, 962 P.2d 252 (Colo. 1998); Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

1-40-108. Petition - time of filing. (1) No petition for any ballot issue shall be of any effect unless filed with the secretary of state within six months from the date that the titles and submission

clause have been fixed and determined pursuant to the provisions of sections 1-40-106 and 1-40-107 and unless filed with the secretary of state within the time required by the state constitution before the election at which it is to be voted upon. A petition for a ballot issue for the election to be held in November of odd-numbered years shall be filed with the secretary of state within the same time before such odd-year election as is required by the state constitution for issues to be voted on at the general election. All filings under this section must be made by 3 p.m. on the day of filing.

(2) (Deleted by amendment, L. 95, p. 433, § 6, effective May 8, 1995.)

Source: **L. 93:** Entire article amended with relocations, p. 682, § 1, effective May 4; (1) amended, p. 1437, § 127, effective July 1. **L. 95:** Entire section amended, p. 433, § 6, effective May 8. **L. 2000:** (1) amended, p. 1622, § 6, effective August 2.

Editor's note: Subsection (1) was formerly numbered as section 1-40-104 and subsection (2) is new. The former section 1-40-108 (1), which was further amended by HB 93-1155, was relocated to section 1-40-115 (1) and (2), and section 1-40-108 (2) was relocated to section 1-40-115 (3).

Cross references: For computation of time under the "Uniform Election Code of 1992", articles 1 to 13 of this title, see § 1-1-106; for computation of time under the statutes generally, see § 2-4-108.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 216-220.

C.J.S. See 82 C.J.S., Statutes, § 121.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The requirement that petitions be circulated within a six-month period is not an unreasonable burden on the rights of either the proponents of the petition or of the voting public. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

1-40-109. Signatures required. (1) No petition for any initiated law or amendment to the state constitution shall be of any force or effect, nor shall the proposed law or amendment to the state constitution be submitted to the people of the state of Colorado for adoption or rejection at the polls, as is by law provided for, unless the petition for the submission of the initiated law or amendment to the state constitution is signed by the number of electors required by the state constitution.

(2) (Deleted by amendment, L. 95, p. 433, § 7, effective May 8, 1995.)

(3) Any person who is a registered elector may sign a petition for any ballot issue for which the elector is eligible to vote.

Source: **L. 93:** Entire article amended with relocations, p. 682, § 1, effective May 4. **L. 94:** (2) amended, p. 1180, § 73, effective July 1. **L. 95:** (2) and (3) amended, p. 433, § 7, effective May 8.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-105, and subsection (3) is new. The former section 1-40-109 (1)(a) was relocated to section 1-40-116 (1), section 1-40-109 (1)(b)(I) was relocated to section 1-40-

116 (2) and (3) and section 1-40-117 (1), section 1-40-109 (1)(b)(II)(A) was relocated to section 1-40-117 (3)(a), section 1-40-109 (1)(b)(II)(B) was relocated to section 1-40-117 (3)(b), section 1-40-109 (1)(c) was relocated to section 1-40-118 (1) and (2), section 1-40-109 (1.6)(a) was relocated to section 1-40-118 (3), section 1-40-109 (1.6)(b) was relocated to section 1-40-118 (4), section 1-40-109 (1.6)(c) was deleted by amendment, section 1-40-109 (2)(a) was relocated to section 1-40-119, section 1-40-109 (2)(b) was relocated to section 1-40-120, and section 1-40-109 (3) was deleted by amendment.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 24.

C.J.S. See 82 C.J.S., Statutes, § 119.

Annotator's note. The following annotations include cases decided under former provisions similar to

this section.

Applied in *Spelts v. Klausing*, 649 P.2d 303 (Colo. 1982).

1-40-110. Warning - ballot title. (1) At the top of each page of every initiative or referendum petition section shall be printed, in a form as prescribed by the secretary of state, the following:

**"WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Before signing this petition, you are encouraged to read the text or the title of the proposed initiative or referred measure."

(2) The ballot title for the measure shall then be printed on each page following the warning.

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4. **L. 95:** IP(1) amended, p. 433, § 8, effective May 8. **L. 2000:** (1) amended, p. 1622, § 7, effective August 2.

Editor's note: Subsection (1) was formerly numbered as section 1-40-106 (1)(a), and subsection (2) was formerly numbered as section 1-40-106 (1)(b). The former section 1-40-110 was relocated to section 1-40-121 (1).

ANNOTATION

- I. General Consideration.
- II. Constitutional Construction.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 26-28.

C.J.S. See 82 C.J.S., Statutes, § 119.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (2) (now § 1-40-111) prohibited the court from validating the signatures collected for an initiative when its title and submission clause were

found to be misleading. *Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733 (Colo. 1994).

II. CONSTITUTIONAL CONSTRUCTION.

Section 1-40-106 must be construed so as to allow qualified electors of the ages of eighteen through

twenty to participate in the initiative process. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Liberal construction must be given to statutes implementing initiative provisions of constitution. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

1-40-111. Signatures - affidavits. (1) Any initiative or referendum petition shall be signed only by registered electors who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city and town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this subsection (1). The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

(2) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include his or her printed name, the address at which he or she resides, including the street name and number, the city or town, the county, and the date he or she signed the affidavit; that he or she has read and understands the laws governing the circulation of petitions; that he or she was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; that he or she circulated the section of the petition; that each signature thereon was affixed in the circulator's presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, a registered elector; and that he or she has not paid or will not in the future pay and that he or she believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the petition. The secretary of state shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

Source: L. 93: Entire article amended with relocations, p. 683, § 1, effective May 4; (2)(a) amended, p. 2049, § 1, effective July 1. L. 95: (2) amended, p. 433, § 9, effective May 8. L. 2007: (2) amended, p. 1982, § 34, effective August 3.

Editor's note: (1) Subsection (1) was formerly numbered as section 1-40-106 (2)(a), and subsection (2) was formerly numbered as section 1-40-106 (2)(b). The former section 1-40-111 was relocated to section 1-40-101. Section 1-40-106 (2)(a) was amended by Senate Bill 93-229, and the amendment to it has been harmonized with subsection (1) of this section.

(2) Subsection (2) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

- I. General Consideration.
- II. Constitutional Construction.
- III. Required Data.
- IV. Signatures.
- V. Circulators.

Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section 1-40-106 (2) (now this section) prohibited the court from validating the signatures collected for an initiative when its title and submission clause were found to be misleading. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 26-28.

C.J.S. See 82 C.J.S., Statutes, §§ 119, 120, 122.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in

II. CONSTITUTIONAL CONSTRUCTION.

Section 1-40-106 must be construed so as to allow qualified electors of the ages of eighteen through twenty to participate in the initiative process. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Liberal construction must be given to statutes implementing initiative provisions of constitution. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

III. REQUIRED DATA.

The purpose of the required data is that those interested in protesting may be apprised of that which will enable them conveniently to check the petition. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

And therefore, the careful entry of the residence (not mere post-office address) of each person with each name should be made at the time of the signing, and should show, in all cities and towns where there are street numbers, the street number of the residence of the signer. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

This is a very important provision. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And it is the most efficient provision against fraud in this section. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Also it is essential to an intelligent protest and should always be carefully obeyed. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And the entry of the date of the signature is only less important. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

But both residence and date of the signature are mandatory by the provisions of § 1 of art. V, Colo. Const. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Therefore, signatures to a petition, where the signer's residence can be identified by street and number, should be rejected if these are lacking. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

But the residence and date of signing may be added by a person other than the petitioner. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Because neither the constitution nor this section specifically requires the signer to add his address and date of signing. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Such additions, although preferably done by the petitioner, may be done by another. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

And failure of signers to insert residences is not ground for rejection. There is nothing in the constitution, statutes, or decisions justifying the rejection of signatures solely by reasons of the failure of signers, under the circumstances prevailing, to insert in the petition streets and numbers of their residences. Case v. Morrison, 118 Colo. 517, 197 P.2d 621 (1948).

And also omission of year from date petition signed was held immaterial. In considering the sufficiency of a petition, the fact that the year is omitted

from the date upon which a signer affixed his signature to the petition is immaterial, where the document as a whole conclusively establishes the year in which the petition was signed. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934), distinguishing Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

Moreover, until filed with the secretary of state, a petition for the initiation of a law is in no sense a public document, and may be checked and corrected by the sponsors before filing. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Computation of residency applicable for municipal referendum. Computation of residency by looking to the date of signature and then to the date of the prospective election to determine whether the durational requirement is satisfied is applicable to a municipal referendum residency requirement. Francis v. Rogers, 182 Colo. 430, 514 P.2d 311 (1973).

IV. SIGNATURES.

Where two or more signatures on a petition are in the same handwriting, all such must be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

So also where sections of a petition have been tampered with after the signatures have been affixed thereto, they must be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

Newspaper pages cut and reassembled for inclusion in petition. Where newspaper pages, on which were printed petition forms in three parts which were used to secure signatures in support of a petition to place a proposed constitutional amendment on the ballot, were cut into the separate parts and then reassembled and bound together for inclusion in the petition presented to the secretary of state, this procedure did not invalidate the signatures since there was no showing or intimation that the separation of the forms involved any alteration, irregularity, or fraud. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

V. CIRCULATORS.

Since there was little in the record to support plaintiffs' claim that the affidavit requirement in subsection (2) significantly burdens political expression by decreasing the pool of available circulators, exacting scrutiny is not required. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Given the responsibility circulators bear in ensuring the integrity of elections involving ballot issues, and given the fact that the affidavit requirement is a reasonable, nondiscriminatory restriction, subsection (2) is not unduly burdensome and unconstitutionally vague. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The requirements of this section are justified by the state's compelling need for the names and

addresses of the circulators and the requirement is sufficiently narrowly drawn to be constitutional. The affidavit requirement has the primary purpose of providing the opportunity for an adequate hearing on the sufficiency of the signatures for the petition for other matters relevant to placing the measure on the ballot. There is a compelling necessity to be able to summon circulators to provide testimony at a hearing on challenges to the validity of the signatures and for other matters relevant to the petitioning process. *Am. Constitutional Law Found., Inc. v. Meyer*, 870 F. Supp. 995 (D. Colo. 1994), *aff'd* on other grounds, 120 F.3d 1092 (10th Cir. 1997), *aff'd* on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

"Read and understand" requirement is a formal requirement to which the court will not apply strict scrutiny in a constitutional challenge: Although requirements limit the power of initiative, the limitation is not substantive. *Loonan v. Woodley*, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement enhances the integrity of the election process and does not unconstitutionally infringe on the right to petition. *Loonan v. Woodley*, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement is not unconstitutionally vague. *Loonan v. Woodley*, 882 P.2d 1380 (Colo. 1994).

Subsection (2) is sufficiently definite because it explicitly endorses the lay circulator's own interpretation of "understanding", and does not invest law enforcement officers with sweeping, unrestrained discretion. *Am. Constitutional Law Found., Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), *aff'd* on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Omission of required affidavit language demonstrated that circulators of the petition did not read and understand the statute as required by this section. *Loonan v. Woodley*, 882 P.2d 1380 (Colo. 1994).

The circulator of a petition for the initiation of a measure can make a positive affidavit that a signature thereon is genuine by reason of its having been written in his presence or through his familiarity with the signer's handwriting, the pertinent law requiring only that the affidavit state that each signature is the signature of the person whose name it purports to be. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

But this section makes it a felony for one person to sign for another. *Miller v. Armstrong*, 84 Colo. 416, 270 P.877 (1928).

And a circulator who makes oath to the genuineness of such signatures, if done with knowledge, is guilty of perjury. *Miller v. Armstrong*, 84 Colo. 416, 270 P.877 (1928).

1-40-112. Circulators - requirements. (1) No person shall circulate a petition for an initiative or referendum measure unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the petition is circulated.

(2) (a) A circulator who is not to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type that is clearly legible.

Since "purport" means to have the appearance or convey the impression of being. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

And in a proceeding to determine the sufficiency of a petition, the contention that portions of the petition, although not vulnerable otherwise, should be discarded because circulators, as shown by other sections, had so deported themselves that they were unworthy of belief, overruled. *Haraway v. Armstrong*, 95 Colo. 398, 36 P.2d 456 (1934).

Substantial compliance is the standard the court must apply in assessing the effect of the deficiencies that caused the district court to hold petition signatures invalid. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

Discrepancies in the day or month of the circulator's date of signing and the date of notary acknowledgment render the relevant petitions invalid absent evidence that explains the differences in question. Petitions containing such discrepancies do not provide the necessary safeguards against abuse and fraud in the initiative process. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

Absent evidence that the change in signing was the product of the signing party, changes to a circulator's signing date do not represent substantial compliance with subsection (2) and serve to invalidate the signatures within the affected petitions. The district court properly held invalid signatures that were tainted by a change in the circulator's date of signing, where the date of signing was not accompanied by the initials of the circulator or other evidence in the record establishing that the circulator made the change. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

The district court erred in invalidating petitions that did not contain a notary seal. The purpose of the notarized affidavit provision in subsection (2) was substantially achieved despite the proponents' failure to secure a notary seal on petitions affecting 92 signatures. The record contains evidence that the affidavits with omitted seals were notarized by individuals with the same signature and commission expiration found on other affidavits with proper seals. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

The initiative proponents substantially complied with the requirements for a circulator's affidavit even though the circulator did not include a date of signing. When the circulator simply omits the date of signing, there is no reason to believe that the affidavit was not both subscribed and sworn to before the notary public on the date indicated in the jurat. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

(b) A circulator who is to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type that is clearly legible and the name and telephone number of the individual employing the circulator.

Source: L. 93: Entire article amended with relocations, p. 684, § 1, effective May 4. L. 2007: Entire section amended, p. 1982, § 35, effective August 3.

Editor's note: (1) Subsection (1) was formerly numbered as section 1-40-106 (3), and subsection (2) is new. The former section 1-40-112 was relocated to section 1-40-122 (1).

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Law reviews. For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court",

see 28 Colo. Law. 71 (June 1999). For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. Since § 1-40-112 is similar to § 1-40-106 as it existed prior to the 1993 amendment of title 1, article 40, which resulted in the relocation of

provisions, see the annotations under former § 1-40-106 in the 1980 replacement volume.

Identification badge requirement violates the first and fourteenth amendments to the United States constitution. The requirement substantially affects the number of potential petition circulators which translates into a corresponding decrease in the amount of protected political speech. The state's articulated interests, an interest in honesty in public discussion of governmental issues and in demonstrating grassroots support for an initiative, are not compelling and the restriction has not been narrowly drawn to further those interests. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Badge requirement discourages participation in the petition circulation process by forcing name identification without sufficient cause. Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Because the requirement in subsection (1) that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997),

aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

The age requirement is a neutral restriction that imposes only a temporary disability-it does not establish an absolute prohibition but merely postpones the opportunity to circulate petitions. Exacting scrutiny is not required. Because maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections, the first amendment challenge fails. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Subsection (2) is not narrowly tailored to serve the state's interest. Conditioning circulation upon wearing an identification badge is a broad intrusion, discouraging truthful, accurate speech by those unwilling to wear a badge, and applying regardless of the character or strength of an individual's interest in anonymity. Additionally, the badges are but one part of the state's comprehensive scheme to combat circulation fraud. Article 40 of title 1 provides other tools that are much more narrowly tailored to serve the state's interest. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

All circulators of initiative petitions must be registered electors, as required in both section 1 of article V of the state constitution and this section. Although the secretary of state was at one time enjoined by federal action from enforcing this requirement, after the injunction was lifted, she properly disallowed petitions circulated by nonregistered voters. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

1-40-113. Form - representatives of signers. (1) Each section of a petition shall be printed on a form as prescribed by the secretary of state. No petition shall be printed, published, or otherwise circulated unless the form and the first printer's proof of the petition have been approved by the secretary of state. Each petition section shall designate by name and mailing address two persons who shall represent the signers thereof in all matters affecting the same. The secretary of state shall assure that the petition contains only the matters required by this article and contains no extraneous material. All

sections of any petition shall be prenumbered serially, and the circulation of any petition section described by this article other than personally by a circulator is prohibited. Any petition section that fails to conform to the requirements of this article or is circulated in a manner other than that permitted in this article shall be invalid.

(2) Any disassembly of a section of the petition which has the effect of separating the affidavits from the signatures shall render that section of the petition invalid and of no force and effect.

(3) Prior to the time of filing, the persons designated in the petition to represent the signers shall bind the sections of the petition in convenient volumes consisting of one hundred sections of the petition if one hundred or more sections are available or, if less than one hundred sections are available to make a volume, consisting of all sections that are available. Each volume consisting of less than one hundred sections shall be marked on the first page of the volume. However, any volume that contains more or less than one hundred sections, due only to the oversight of the designated representatives of the signers or their staff, shall not result in a finding of insufficiency of signatures therein. Each section of each volume shall include the affidavits required by section 1-40-111 (2), together with the sheets containing the signatures accompanying the same. These bound volumes shall be filed with the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 684, § 1, effective May 4. L. 95: (1) and (3) amended, p. 434, § 10, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-107. The former section 1-40-113 was relocated to section 1-40-123.

ANNOTATION

C.J.S. See 82 C.J.S., Statutes, §§ 116, 117, 121.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

There is a substantial compliance with the requirements that petitions for the initiation of measures shall be printed on pages eight and one-half inches wide, and fourteen inches long with a margin of two inches at the top for binding, where the pages of the protested document are eight and one-half inches wide, thirteen and fifteen-sixteenths inches long, and the top margin varies from one

and five-sixteenths inches to two and one-sixteenth inches on the various sheets. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

And the separation and alteration of sections of a petition to initiate a measure, destroys the integrity of each one so separated and altered, and renders it worthless. *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926); *Miller v. Armstrong*, 84 Colo. 416, 270 P. 877 (1928).

Applied in *Leach & Arnold Homes, Inc. v. City of Boulder*, 32 Colo. App. 16, 507 P.2d 476 (1973).

1-40-114. Petitions - not election materials - no bilingual language requirement. The general assembly hereby determines that initiative petitions are not election materials or information covered by the federal "Voting Rights Act of 1965", and therefore are not required to be printed in any language other than English to be circulated in any county in Colorado.

Source: L. 93: Entire article amended with relocations, p. 685, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-107.5. The former section 1-40-114 (1) and (2) was relocated to section 1-40-124, and subsection (3), which was added by House Bill 93-1155, was relocated to section 1-40-126.

ANNOTATION

Law reviews. For comment, "Montero v. Meyer: Official English, Initiative Petitions and the Voting Rights Act", see 66 Den. U. L. Rev. 619 (1989). For comment, "Another View of Montero v. Meyer and the English-Only Movement: Giving Language Prejudice the Sanction of the Law", see 66 Den. U. L. Rev. 633 (1989).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Minority language provisions of the federal

"Voting Rights Act" not applicable to initiative petitions. With respect to initiative petitions, electoral

process to which the minority language provisions of the "Voting Rights Act" would apply did not commence under state law until the measure was certified as qualified for placement on the ballot. Furthermore, the signing of

petitions did not constitute "voting" under the act. *Montero v. Meyer*, 861 F.2d 603 (10th Cir. 1988) (decided prior to enactment of this section).

1-40-115. Ballot - voting - publication. (1) Measures shall appear upon the official ballot by ballot title only. The measures shall be placed on the ballot in the order in which they were certified to the ballot and as provided in section 1-5-407 (5).

(2) All ballot issues shall be printed on the official ballot in that order, together with their respective letters and numbers prefixed in bold-faced type. Each ballot shall have the following explanation printed one time at the beginning of such ballot issues: "Ballot issues referred by the general assembly or any political subdivision are listed by letter, and ballot issues initiated by the people are listed numerically. A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a 'no' vote on any ballot issue is a vote against changing current law or existing circumstances." Each ballot title shall appear on the official ballot but once and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" with blank spaces to the right and opposite the same as follows:

**(HERE SHALL APPEAR THE
BALLOT TITLE IN FULL)**

YES _____ NO _____

(3) A voter desiring to vote for the measure shall make a cross mark (X) in the blank space to the right and opposite the word "yes"; a voter desiring to vote against the measure shall make a cross mark (X) in the blank space to the right and opposite the word "no"; and the votes marked shall be counted accordingly. Any measure approved by the people of the state shall be printed with the acts of the next general assembly.

Source: L. 93: Entire article amended with relocations, p. 685, § 1, effective May 4. **L. 94:** (1) amended, p. 1180, § 74, effective July 1. **L. 95:** (3) amended, p. 434, § 11, effective May 8. **L. 97:** (2) amended, p. 189, § 17, effective August 6. **L. 2000:** (2) amended, p. 297, § 2, effective August 2.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-108 (1), which was further amended by HB 93-1155, and subsection (3) was formerly numbered as section 1-40-108 (2). The former section 1-40-115 was relocated to section 1-40-127.

Cross references: For printing of session laws, see § 24-70-223.

ANNOTATION

Am. Jur.2d See 42 Am. Jur.2d, Initiative and Referendum, § 46.

C.J.S. See 82 C.J.S., Statutes, §§ 131, 132.

1-40-116. Verification - ballot issues - random sampling. (1) For ballot issues, each section of a petition to which there is attached an affidavit of the registered elector who circulated the petition that each signature thereon is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing the petition was at the time of signing a registered elector shall be prima facie evidence that the signatures are genuine and true, that the petitions were circulated in accordance with the provisions of this article, and that the form of the petition is in accordance with this article.

(2) Upon submission of the petition, the secretary of state shall examine each name and signature on the petition. The petition shall not be available to the public for a period of no more than thirty calendar days for the examination. The secretary shall assure that the information required by

sections 1-40-110 and 1-40-111 is complete, that the information on each signature line was written by the person making the signature, and that no signatures have been added to any sections of the petition after the affidavit required by section 1-40-111 (2) has been executed.

(3) No signature shall be counted unless the signer is a registered elector and eligible to vote on the measure. A person shall be deemed a registered elector if the person's name and address appear on the master voting list kept by the secretary of state at the time of signing the section of the petition. In addition, the secretary of state shall not count the signature of any person whose information is not complete or was not completed by the elector or a person qualified to assist the elector. The secretary of state may adopt rules consistent with this subsection (3) for the examination and verification of signatures.

(4) The secretary of state shall verify the signatures on the petition by use of random sampling. The random sample of signatures to be verified shall be drawn so that every signature filed with the secretary of state shall be given an equal opportunity to be included in the sample. The secretary of state is authorized to engage in rule-making to establish the appropriate methodology for conducting such random sample. The random sampling shall include an examination of no less than five percent of the signatures, but in no event less than four thousand signatures. If the random sample verification establishes that the number of valid signatures is ninety percent or less of the number of registered eligible electors needed to find the petition sufficient, the petition shall be deemed to be not sufficient. If the random sample verification establishes that the number of valid signatures totals one hundred ten percent or more of the number of required signatures of registered eligible electors, the petition shall be deemed sufficient. If the random sampling shows the number of valid signatures to be more than ninety percent but less than one hundred ten percent of the number of signatures of registered eligible electors needed to declare the petition sufficient, the secretary of state shall order the examination and verification of each signature filed.

Source: L. 93: Entire article amended with relocations, p. 686, § 1, effective May 4. **L. 95:** (1) amended, p. 435, § 12, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-109 (1)(a), subsections (2) and (3) were formerly numbered as section 1-40-109 (1)(b)(I), and subsection (4) is new. The former section 1-40-116 (1) was relocated to section 1-40-128, section 1-40-116 (2) was relocated to section 1-40-129 (1), and section 1-40-116 (3) was relocated to section 1-40-129 (2).

ANNOTATION

- I. General Consideration.
- II. Prima Facie Evidence Signatures Genuine.
- III. Amendment and Withdrawal of Petition.
- IV. Supplements to the Petition.

is controlled by the specific affidavit requirements in § 1-40-111(2). *Am. Constitutional Law Found., Inc. v. Meyer*, 870 F. Supp. 995 (D. Colo. 1994), *aff'd in part and rev'd in part on other grounds*, 120 F.3d 1092 (10th Cir. 1997), *aff'd on other grounds*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (1) is not unconstitutionally vague. The general reference to circulator affidavits in this section

The secretary of state is deemed to have complied with the 30-day requirement for verifying signatures when he or she conducts the random sampling and issues a statement determining the petition to be either sufficient or insufficient, even though the sampling is later found to be erroneous. The petition is not automatically deemed sufficient even though final determination of the sufficiency of the petition occurs outside of the thirty-day time frame. *Buckley v. Chilcutt*, 968 P.2d 112 (Colo. 1998).

If, based on a random sample, the secretary of state issues a good faith determination of

insufficiency and a timely protest establishes that the petition contains more than 90% but less than 110% of the required signatures, the secretary of state is required

to conduct a line-by-line examination of each signature. The results of the line-by-line count are subject to the protest and appeal process provided in § 1-40-118. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

II. PRIMA FACIE EVIDENCE SIGNATURES GENUINE.

The statement in an affidavit attached to a petition for the initiation of a measure, that the signer "is a qualified elector", is prima facie evidence that the signatures thereon are genuine and that the persons signing are electors. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the filing of a protest to the petition does not nullify this prima facie status nor relieve the protestants of the burden of establishing the insufficiency of the petition. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Moreover, payment to circulators for procuring signatures held not to constitute fraud. A protest filed to a petition to initiate a measure, alleging fraud in the procurement of signatures, is not supported by the fact that circulators were paid a certain sum for signatures procured, there being nothing in the constitution or statutes prohibiting such practice. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

III. AMENDMENT AND WITHDRAWAL OF PETITION.

There is no provision permitting the amendment of a protest to a petition for the initiation of a measure after the expiration of the time allowed for filing the protest. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former subsection (2), which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the 15 days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by §1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiled after withdrawal, of a

petition, to initiate a measure under the initiative and referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiled because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Rule of the secretary of state regarding the procedure to determine the total number of valid petition signatures after submittal of additional signatures by addendum was authorized and is consistent with subsection (4). The rule increases the accuracy of sufficiency determination, enhances the integrity of the petition process, and assures compliance with the constitutionally prescribed minimum number of votes necessary to qualify for placement of a measure on the statewide ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

IV. SUPPLEMENTS TO THE PETITION.

Section 1 of art. V. Colo. Const., fixes the time within which a petition must be filed with the secretary of state. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

And requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Section 1 of art. V, Colo. Const., is a self-executing constitutional provision. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

So where there are insufficient signatures when a petition is originally presented, and too late filing when the supplements are presented, the petition for an initiated amendment to the constitution is not filed in

compliance with § 1 of art. V, Colo. Const. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Because permitting the filing of late supplements containing enough signatures to satisfy the mandate of the constitution would be a circumvention of this fundamental document. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Moreover, § 1 of art. V. Colo. Const., mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

1-40-117. Statement of sufficiency - statewide issues. (1) After examining the petition, the secretary of state shall issue a statement as to whether a sufficient number of valid signatures appears to have been submitted to certify the petition to the ballot.

(2) If the petition was verified by random sample, the statement shall contain the total number of signatures submitted and whether the number of signatures presumed valid was ninety percent of the required total or less or one hundred ten percent of the required total or more.

(3) (a) If the secretary declares that the petition appears not to have a sufficient number of valid signatures, the statement issued by the secretary shall specify the number of sufficient and insufficient signatures. The secretary shall identify by section number and line number within the section those signatures found to be insufficient and the grounds for the insufficiency. Such information shall be kept on file for public inspection in accordance with section 1-40-118.

(b) In the event the secretary of state issues a statement declaring that a petition, having first been submitted with the required number of signatures, appears not to have a sufficient number of valid signatures, the representatives designated by the proponents pursuant to section 1-40-104 may cure the insufficiency by filing an addendum to the original petition for the purpose of offering such number of additional signatures as will cure the insufficiency. No addendum offered as a cure shall be considered unless the addendum conforms to requirements for petitions outlined in sections 1-40-110, 1-40-111, and 1-40-113, and unless the addendum is filed with the secretary of state within the fifteen-day period after the insufficiency is declared and unless filed with the secretary of state within the time required by the state constitution before the election at which the initiative petition is to be voted on. All filings under this paragraph (b) shall be made by 3 p.m. on the day of filing. Upon submission of a timely filed addendum, the secretary of state shall order the examination and verification of each signature on the addendum. The addendum shall not be available to the public for a period of up to ten calendar days for such examination. After examining the petition, the secretary of state shall, within ten calendar days, issue a statement as to whether the addendum cures the insufficiency found in the original petition.

Source: L. 93: Entire article amended with relocations, p. 687, § 1, effective May 4.

Editor's note: Subsection (1) was formerly numbered as section 1-40-109 (1)(b)(I), subsection (2) is new, paragraph (a) of subsection (3) was formerly numbered as section 1-40-109 (1)(b)(II)(A), and paragraph (b) of subsection (3) was formerly numbered as section 1-40-109 (1)(b)(II)(B). The former section 1-40-117 was deleted by amendment.

ANNOTATION

- I. General Consideration.
- II. Prima Facie Evidence Signatures Genuine.
- III. Amendment and Withdrawal of Petition.
- IV. Supplements to the Petition.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. PRIMA FACIE EVIDENCE SIGNATURES GENUINE.

The statement in an affidavit attached to a petition for the initiation of a measure, that the signer "is a qualified elector", is prima facie evidence that the signatures thereon are genuine and that the persons signing are electors. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the filing of a protest to the petition does not nullify this prima facie status nor relieve the protestants of the burden of establishing the insufficiency of the petition. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

Moreover, payment to circulators for procuring signatures held not to constitute fraud. A protest filed to a petition to initiate a measure, alleging fraud in the procurement of signatures, is not supported by the fact that circulators were paid a certain sum for signatures procured, there being nothing in the constitution or statutes prohibiting such practice. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

III. AMENDMENT AND WITHDRAWAL OF PETITION.

There is no provision permitting the amendment of a protest to a petition for the initiation of a measure after the expiration of the time allowed for filing the protest. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

Former subsection (2), which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). *Montero v. Meyer*, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the fifteen days allowed by this section. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by §1-40-104 for the filing of original petitions. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiled after withdrawal, of a petition, to initiate a measure under the initiative and referendum. *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. *Robinson v.*

Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiled because if refiled it comes back "as an original petition". *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

IV. SUPPLEMENTS TO THE PETITION.

Section 1 of art. V, Colo. Const., fixes the time within which a petition must be filed with the secretary of state. *Christensen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958).

And requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. *Christensen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958).

Section 1 of art. V, Colo. Const., is a self-executing constitutional provision. *Christensen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958).

So where there are insufficient signatures when a petition is originally presented, and too late filing when the supplements are presented, the petition for an initiated amendment to the constitution is not filed in compliance with § 1 of art. V, Colo. Const. *Christensen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958).

Because permitting the filing of late supplements containing enough signatures to satisfy the mandate of the constitution would be a circumvention of this fundamental document. *Christensen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958).

Moreover, § 1 of art. V, Colo. Const., mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution. *Christensen v. Baker*, 138 Colo. 27, 328 P.2d 951 (1958).

1-40-118. Protest. (1) A protest in writing, under oath, together with three copies thereof, may be filed in the district court for the county in which the petition has been filed by some registered elector,

within thirty days after the secretary of state issues a statement as to whether the petition has a sufficient number of valid signatures, which statement shall be issued no later than thirty calendar days after the petition has been filed. If the secretary of state fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient. During the period a petition is being examined by the secretary of state for sufficiency, the petition shall not be available to the public; except that such period shall not exceed thirty calendar days.

(2) If the secretary of state conducted a random sample of the petitions and did not verify each signature, the protest shall specifically allege the defects in the procedure used by the secretary of state in the verification of the petition or the grounds for challenging individual signatures. If the secretary of state verified each name on the petition sections, the protest shall set forth with particularity the grounds of the protest and the signatures protested. No signature may be challenged that is not identified in the protest by section number, line number, name, and reason why the secretary of state is in error. If any party is protesting the finding of the secretary of state regarding the registration of a signer, the protest shall be accompanied by an affidavit of the elector or a copy of the election record of the signer.

(3) (Deleted by amendment, L. 95, p. 435, § 13, effective May 8, 1995.)

(4) The secretary of state shall furnish a requesting protestor with a computer tape or microfiche

listing of the names of all registered electors in the state and shall charge a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of furnishing the listing.

Source: L. 93: Entire article amended with relocations, p. 688, § 1, effective May 4. L. 95: (1) to (3) amended, p. 435, § 13, effective May 8.

Editor's note: Subsections (1) and (2) were formerly numbered as section 1-40-109 (1)(c), subsection (3) was formerly numbered as section 1-40-109 (1.6)(a), and subsection (4) was formerly numbered as section 1-40-109 (1.6)(b). The former section 1-40-118 (1) was deleted by amendment, section 1-40-118 (2) was relocated to section 1-40-130 (1), and section 1-40-118 (3) was relocated to section 1-40-130 (2).

ANNOTATION

- I. General Consideration.
- II. Specification of Grounds and Oath.
- III. Amended Protest.
- IV. Protests Before Secretary of State.
- V. Remedy Provided.
- VI. Effect on Other Tribunals.
- VII. Injunction for Fraud.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. SPECIFICATION OF GROUNDS AND OATH.

The provisions of this section that a protest to a petition for the submission of an act of the general assembly to the people must specify the grounds of such protest, and be under oath, are jurisdictional. *Ramer v. Wright*, 62 Colo. 53, 159 P. 1145 (1916); *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

And the secretary of state is without power to act in the absence of a substantial compliance therewith. *Ramer v. Wright*, 62 Colo. 53, 159 P. 1145 (1916); *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

There was not a substantial compliance where, appended to a protest, appeared the certificate of a notary public that certain persons each "deposes and says: That he subscribed the above protest after reading the same, and the contents thereof are true to the best of his knowledge, information and belief", but there was no statement that the persons named were sworn. Therefore, the secretary had no authority to entertain the protest. *Ramer v. Wright*, 62 Colo. 53, 159 P. 1145 (1916).

The requirement that the protest must be under oath is not so unreasonable as to invalidate the statute. *Ramer v. Wright*, 62 Colo. 53, 159 P. 1145 (1916).

III. AMENDED PROTEST.

Whether a protest should specify the names protested was not determined in *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

Amended protest was properly dismissed by the secretary of state despite the secretary's incorrect notification to the protestor that a protest could be filed by a specified date. The secretary of state lacked the authority to enlarge the protest period provided in former version of this section, and protestor cannot state claim for relief

under theory of estoppel against a state entity on the basis of an unauthorized action or promise. *Montero v. Meyer*, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

Petitioners properly sought district court review under this section and § 1-40-119 without first pursuing the administrative remedies outlined in § 1-40-132 (1). Section 1-40-132 (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

IV. PROTESTS BEFORE SECRETARY OF STATE.

Where a petition is protested before the secretary of state, that official in making findings should specify the names or categories of names which should be rejected. *Miller v. Armstrong*, 84 Colo. 416, 270 P. 877 (1928).

The secretary of state improperly applied the perfect match rule in disallowing signatures where there was a discrepancy between the street directional or apartment number as they appeared on the petition and the master voting list. This information is not required under the statute and is therefore extraneous. *McClellan v. Meyer*, 900 P.2d 24 (Colo. 1995).

The secretary of state also erred in disallowing signatures based on discrepancies between the name of the town as included with the signature and as stated on the master voting list where the secretary had actual knowledge that the discrepancies were a result of the creation of a town that occurred after preparation of the master voting list. *McClellan v. Meyer*, 900 P.2d 24 (Colo. 1995).

The secretary of state properly disallowed signatures when the signer indicated or omitted a designation of junior or senior that was omitted from or included on the master list. *McClellan v. Meyer*, 900 P.2d 24 (Colo. 1995).

Where an elector moves to a new residence and retains the same post office box as a mailing address, the signature should be rejected unless the elector is registered at a post office address and the post office address is the only address assigned to a particular residence. *McClellan v. Meyer*, 900 P.2d 24 (Colo. 1995).

V. REMEDY PROVIDED.

This section provides one special remedy and only one, a judicial review of "the findings as to the sufficiency" of the petition. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

However, this remedy is not compulsory. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

The parties may waive it, or abandon or dismiss it after beginning it. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

But where a petition is protested before the secretary of state, after whose decision the matter is taken into court, the case is before the court for review

and not for trial de novo. *Miller v. Armstrong*, 84 Colo. 416, 270 P. 877 (1928).

And on dismissal of such an action, an order of the trial court that the petition be returned to the secretary of state is proper. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

If, based on a random sample, the secretary of state issues a good faith determination of insufficiency and a timely protest establishes that the petition contains more than 90 % but less than 110 % of the required signatures, the secretary of state is required to conduct a line-by-line examination of each signature. The results of the line-by-line count are subject to the protest and appeal process provided in this section. *Buckley v. Chilcutt*, 968 P.2d 112 (Colo. 1998).

VI. EFFECT ON OTHER TRIBUNALS.

This section sets up a special procedure for protesting petitions for the initiation of measures. *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

But it does not deprive courts of equity of jurisdiction in such cases. *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

And the statutory procedure outlined has no application to actions in equity courts. *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

This section does not provide an exclusive and adequate remedy so as to deprive equity courts of jurisdiction. *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

Section inapplicable to actions in court. The provisions of this section concerning the sufficiency of petitions for the initiation of laws have no application to action in court. *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

And courts may interfere in matters preliminary to elections, such as determining the validity of a petition to initiate a measure. *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

Proceedings before the secretary of state to determine the validity of a petition to initiate a measure is not another suit pending so as to oust a court of jurisdiction in an action to enjoin the placing of the measure on the ballot. And, where it does not appear on the face of a complaint that there is another suit pending, such objection may not be raised by demurrer. *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

VII. INJUNCTION FOR FRAUD.

Fraud may be the basis of an injunction against the submission of the subject of the petition to vote, which submission is also a preliminary of the election. *Leckenby v. Post Printing & Publishing Co.*, 65 Colo. 443, 176 P. 490 (1918); *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

And if we do not hold in this way, we shall be compelled to say that if a petition with a sufficient number of names, on its face valid, should be laid before the secretary of state, it could not be successfully attacked even

though every name were forged and every affidavit attached to it were false. *Leckenby v. Post Printing & Publishing Co.*, 65 Colo. 443, 176 P. 490 (1918); *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

The petition is a preliminary to an initiated election, and if fraudulent, may not be given effect. *Leckenby v. Post Printing & Publishing Co.*, 65 Colo. 443, 176 P. 490 (1918); *Elkins v. Milliken*, 80 Colo. 135, 249 P. 655 (1926).

1-40-119. Procedure for hearings. At any hearing held under this article, the party protesting the finding of the secretary of state concerning the sufficiency of signatures shall have the burden of proof. Hearings shall be had as soon as is conveniently possible and shall be concluded within thirty days after the commencement thereof, and the result of such hearings shall be forthwith certified to the designated representatives of the signers and to the protestors of the petition. The hearing shall be subject to the provisions of the Colorado rules of civil procedure. Upon application, the decision of the court shall be reviewed by the Colorado supreme court.

Source: L. 93: Entire article amended with relocations, p. 689, § 1, effective May 4. **L. 95:** Entire section amended, p. 436, § 14, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-109 (2)(a). The former section 1-40-119 was relocated to section 1-40-132 (1).

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Petitioners properly sought district court review under this section and § 1-40-118 without first pursuing the administrative remedies outlined in

§ 1-40-132 (1). Section 1-40-132 (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

1-40-120. Filing in federal court. In case a complaint has been filed with the federal district court on the grounds that a petition is insufficient due to failure to comply with any federal law, rule, or regulation, the petition may be withdrawn by the two persons designated pursuant to section 1-40-104 to represent the signers of the petition and, within fifteen days after the court has issued its order in the matter, may be amended and refiled as an original petition. Nothing in this section shall prohibit the timely filing of a protest to any original petition, including one that has been amended and refiled. No person shall be entitled, pursuant to this section, to amend an amended petition.

Source: L. 93: Entire article amended with relocations, p. 689, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-109 (2)(b). The former section 1-40-120 was deleted by amendment.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

Former section, which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). *Montero v. Meyer*, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the fifteen days allowed by this section. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by § 1-40-104 for the filing of original petitions. *Brownlow v. Wunch*, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and referendum. *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932); *Brownlow v. Wunch*, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. *Robinson v. Armstrong*, 90 Colo. 363, 9 P.2d 481 (1932).

1-40-121. Receiving money to circulate petitions - filing. (1) The proponents of the petition shall file with the official who receives filings under the "Fair Campaign Practices Act", article 45 of this title, for the election a report stating the total amount paid to all persons who were paid to circulate a section of the petition. The filing shall be made at the same time the petition is filed with the secretary of state. A payment made to a circulator is an expenditure under article 45 of this title.

(2) (Deleted by amendment, L. 2007, p. 1983, § 36, effective August 3, 2007.)

Source: L. 93: Entire article amended with relocations, p. 690, § 1, effective May 4. L. 95: (1) and IP(2) amended, p. 436, § 15, effective May 8. L. 98: (1) amended, p. 815, § 2, effective August 5. L. 2007: Entire section amended, p. 1983, § 36, effective August 3.

Editor's note: (1) Subsection (1) was formerly numbered as section 1-40-110, and subsection (2) is new.

(2) This section was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Law reviews. For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court", see 28 Colo. Law. 71 (June 1999). For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ban of "inducement" overly broad. The language of this section is too broad to survive strict scrutiny. The ban of any "inducement" to petition circulation sweeps far too broadly. *Urevich v. Woodward*, 667 P.2d 760 (Colo. 1983).

Section construed to delete "inducement". This section must be narrowed to delete the word "inducement". *Urevich v. Woodward*, 667 P.2d 760 (Colo. 1983).

Section unconstitutional. This section violates the first and fourteenth amendments to the U.S.

constitution by imposing a direct and substantial restriction on the right to political speech, employing unnecessarily broad prohibitions. *Grant v. Meyer*, 828 F.2d 1446 (10th Cir. 1987), aff'd, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988).

Given the business of circulation for hire, there is an interest in compelling disclosure by the proponents of the persons or entities being hired, not only to prevent fraud but to give the public information concerning who the principal proponents are and what kind of financial resources may be available to them. That legitimate interest, however, is not significantly advanced

by disclosure of the names and addresses of each person paid to circulate any section of the petition. What is of interest is the payor, not the payees. Upon elimination of the provision requiring identification of the circulators, the burden on proponents is slight. This requirement as modified is valid. *Am. Constitutional Law Found., Inc. v. Meyer*, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

To the extent the monthly report requirement

includes the name and residential and business addresses of each of the paid circulators, it is unconstitutional. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Requiring proponents to provide a detailed roster of all who were paid to circulate compromises the expressive rights of paid circulators, but sheds little light on the relative merit of the ballot issue. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Compelling detailed monthly disclosures while the petition is being circulated chills speech by forcing paid circulators to surrender the anonymity enjoyed by their volunteer counterparts. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Since the state has failed to demonstrate how monthly reports meet the stated objectives of preventing fraud as compared with the final report to be filed when the petitions are submitted to the designated election official, the monthly reports are restrictions on core

political speech and are invalid. Preparation of the monthly reports is burdensome and involves an additional expense to those supporting an initiative or referendum petition. Testimony was presented showing that the monthly reports affect the circulation process and therefore the amount of core political speech. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Compelling the disclosure of the identities of every paid circulator chills paid circulation, a constitutionally protected exercise. Although the fact that disclosure is made at the time the proponents file the petition lessens the burden of the disclosure, the law fails exacting scrutiny because the interests asserted by the state either already are or can be protected by less intrusive measures. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

1-40-122. Certification of ballot titles. (1) The secretary of state, at the time the secretary of state certifies to the county clerk and recorder of each county the names of the candidates for state and district offices for general election, shall also certify to them the ballot titles and numbers of each initiated and referred measure filed in the office of the secretary of state to be voted upon at such election.

(2) Repealed.

Source: L. 93: Entire article amended with relocations, p. 690, § 1, effective May 4. **L. 95:** (2) repealed, p. 436, § 16, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-112, and subsection (2) is new.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Secretary of state properly certified initiated measure for general election ballot, even though a challenge to the measure had been filed with the secretary

pursuant to former § 1-40-109 (2). *Montero v. Meyer*, 795 P.2d 242 (Colo. 1990).

Secretary of state has sole authority to set election dates or place initiated measures on ballot, and title setting board has no such authority. *Matter of Title, Ballot Title, Etc.*, 850 P.2d 144 (Colo. 1993).

1-40-123. Counting of votes - effective date - conflicting provisions. The votes on all measures submitted to the people shall be counted and properly entered after the votes for candidates for office cast at the same election are counted and shall be counted, canvassed, and returned and the result determined and certified in the manner provided by law concerning other elections. The secretary of state who has certified the election shall, without delay, make and transmit to the governor a certificate of election. The measure shall take effect from and after the date of the official declaration of the vote by proclamation of the governor, but not later than thirty days after the votes have been canvassed, as provided in section 1 of article V of the state constitution. A majority of the votes cast thereon shall

adopt any measure submitted, and, in case of adoption of conflicting provisions, the one that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict.

Source: L. 93: Entire article amended with relocations, p. 691, § 1, effective May 4. **L. 95:** Entire section amended, p. 436, § 17, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-113.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 37.

C.J.S. See 82 C.J.S., Statutes, § 135.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section enhances rather than limits the right of the people to amend the Colorado constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Conflicting constitutional amendments. Amendment nos. 6 and 9, proposed constitutional amendments relating to reapportionment on the ballot at the general election held on November 5, 1974, are in conflict where the former, a housekeeping amendment, among many other things, provides that the general assembly is to

establish district boundaries and that there is to be no more than a five percent population deviation from the mean in each district while the latter, dealing exclusively with reapportionment, provides for a commission to promulgate a plan of reapportionment which the supreme court either approves or, in effect, orders modified as required by the court and for a maximum five percent deviation between the most populous and the least populous district in each house. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

One with most votes prevails. In order to carry out the meaning and purpose of § 1 of art. V, Colo. Const.,

1-40-124. Publication. (1) (a) In accordance with section 1 (7.3) of article V of the state constitution, the director of research of the legislative council of the general assembly shall cause to be published at least one time in at least one legal publication of general circulation in each county of the state, compactly and without unnecessary spacing, in not less than eight-point standard type, a true copy of:

(I) The title and text of each constitutional amendment, initiated or referred measure, or part of a measure, to be submitted to the people with the number and form in which the ballot title thereof will be printed in the official ballot; and

(II) The text of each referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), to be submitted to the people with the number and form in which such question will be printed in the official ballot.

(b) The publication may be in the form of a notice printed in a legal newspaper, as defined in sections 24-70-102 and 24-70-103 (1), C.R.S., or in the form of a publication that is printed separately and delivered as an insert in such a newspaper. The director of research of the legislative council may

the one of two inconsistent amendments which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

It is the duty of the court, whenever possible, to give effect to the expression of the will of the people contained in constitutional amendments adopted by them. In re Interrogatories Propounded by the Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

When two constitutional amendments are simultaneously adopted, the court should not resort to rules that give effect to one provision at the expense of the other unless there is an irreconcilable, material, and direct conflict between the two amendments. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

When constitutional amendments enacted at the same election are in such irreconcilable conflict, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The test for the existence of a conflict is: Does one authorize what the other forbids or forbid what the other authorizes? Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

determine which form the publication will take in each legal newspaper. The director may negotiate agreements with one or more legal newspapers, or with any organization that represents such newspapers, to authorize the printing of a separate insert by one or more legal newspapers to be delivered by all of the legal newspapers participating in the agreement.

(c) Where more than one legal newspaper is circulated in a county, the director of research of the legislative council shall select the newspaper or newspapers that will make the publication. In making such selection, the director shall consider the newspapers' circulation and charges.

(d) The amount paid for publication shall be determined by the executive committee of the legislative council and shall be based on available appropriations. In determining the amount, the executive committee may consider the newspaper's then effective current lowest bulk comparable or general rate charged and the rate specified for legal newspapers in section 24-70-107, C.R.S. The director of research of the legislative council shall provide the legal newspapers selected to perform printing in accordance with this subsection (1) either complete slick proofs or mats of the title and text of the proposed constitutional amendment, initiated or referred measure, or part of a measure, and of the text of a referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), at least one week before the publication date.

(e) If no legal newspaper is willing or able to print or distribute the publication in a particular county in accordance with the provisions of this subsection (1), the director of research of the legislative council shall assure compliance with the publication requirements of section 1 (7.3) of article V of the state constitution by causing the printing of additional inserts or legal notices in such manner and form as deemed necessary and by providing for their separate circulation in the county as widely as may be practicable. Such circulation may include making the publications available at government offices and other public facilities or private businesses. If sufficient funds are available for such purposes, the director may also contract for alternative methods of circulation or may cause circulation by mailing the publication to county residents. Any printing and circulation made in accordance with this paragraph (e) shall be deemed to be a legal publication of general circulation for purposes of section 1 (7.3) of article V of the state constitution.

(2) (Deleted by amendment, L. 95, p. 437, § 18, effective May 8, 1995.)

Source: **L. 93:** Entire article amended with relocations, p. 691, § 1, effective May 4. **L. 94:** (1) amended, p. 1688, § 1, effective January 19, 1995. **L. 95:** Entire section amended, p. 437, § 18, effective May 8. **L. 2000:** (1) amended, p. 298, § 3, effective August 2. **L. 2004:** (1) amended, p. 961, § 1, effective May 21.

Editor's note: (1) This section was formerly numbered as section 1-40-114 (1) and (2).

(2) Section 5 of chapter 284, Session Laws of Colorado 1994, provided that the act amending subsection (1) was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 94-005, enacted at the Second Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 94-005 was January 19, 1995.

ANNOTATION

- I. General Consideration.
- II. Publication.
- III. Newspapers of General Circulation.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 37.

C.J.S. See 82 C.J.S., Statutes, § 129.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The facts upon which depend the question whether an amendment proposed to the constitution has

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received the approval of the people will be judicially noticed and the court will resort to all sources of information which may afford satisfactory evidence upon the question. *Harrison v. People ex rel. Whatley*, 57 Colo. 137, 140 P. 203 (1914).

II. PUBLICATION.

The purpose of the provision that the full text of a proposed amendment be published in a newspaper of general circulation is to acquaint the voters, before they enter the polling booths, as to the contents of measures

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submitted. *Cook v. Baker*, 121 Colo. 187, 214 P.2d 787 (1950).

And to require that the text of an amendment or a substantial portion thereof be again printed on the official ballot, is contrary to all precedent, could serve no useful purpose, and was not within the contemplation of the general assembly. *Cook v. Baker*, 121 Colo. 187, 214

P.2d 787 (1950).

The timely publication of a constitutional amendment in 62 counties of the state, with only five days' delay in the sixty-third county and that without fault of either the proponents of the amendment or of the secretary of state, is a substantial compliance with the requirement of the statute. *Yenter v. Baker*, 126 Colo. 232, 248 P.2d 311 (1952).

And where publication was in compliance with the provisions of the section, the supreme court makes no determination as to the validity of the statutory provisions requiring such publication. *Yenter v. Baker*, 126 Colo. 232, 248 P.2d 311 (1952).

III. NEWSPAPERS OF GENERAL CIRCULATION.

The phrase "newspaper of general circulation in each county" means that an amendment must be published in one newspaper in each county in the state, which is published, and has a general circulation, in that county. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

The phrase "general circulation" is descriptive of the character of the newspaper. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

And it must be one of general, not special, or limited circulation. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

The newspaper may not be a mere advertising sheet, or a newspaper restricted or devoted to some particular trade or calling, or branch of industry. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

1-40-124.5. Ballot information booklet. (1) (a) The director of research of the legislative council of the general assembly shall prepare a ballot information booklet for any initiated or referred constitutional amendment or legislation, including a question, as defined in section 1-41-102 (3), in accordance with section 1 (7.5) of article V of the state constitution.

(b) The director of research of the legislative council of the general assembly shall prepare a fiscal impact statement for every initiated or referred measure, taking into consideration fiscal impact information submitted by the office of state planning and budgeting, the department of local affairs or any other state agency, and any proponent or other interested person. The fiscal impact statement prepared for every measure shall be substantially similar in form and content to the fiscal notes provided by the legislative council of the general assembly for legislative measures pursuant to section 2-2-322, C.R.S. A complete copy of the fiscal impact statement for such measure shall be available through the legislative council of the general assembly. The ballot information booklet shall indicate whether there is a fiscal impact for each initiated or referred measure and shall abstract the fiscal impact statement for such measure. The abstract for every measure shall appear after the arguments for and against such measure in the analysis section of the ballot information booklet, and shall include, but shall not be limited to:

(I) An estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if such measure is enacted;

(II) An estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if such measure is enacted; and

(III) For any initiated or referred measure that modifies the state tax laws, an estimate of the impact to the average taxpayer, if feasible, if such measure is enacted.

(c) Repealed.

(1.5) The executive committee of the legislative council of the general assembly shall be responsible for providing the fiscal information on any ballot issue that must be included in the ballot information booklet pursuant to section 1 (7.5) (c) of article V of the state constitution.

(1.7) After receiving written comments from the public in accordance with section 1 (7.5) (a) (II) of article V of the state constitution, but before the draft of the ballot information booklet is finalized, the director of research of the legislative council of the general assembly shall conduct a public meeting

at which the director and other members of the legislative staff have the opportunity to ask questions that arise in response to the written comments. The director may modify the draft of the booklet in response to comments made at the hearing. The legislative council may modify the draft of the booklet upon the two-thirds affirmative vote of the members of the legislative council.

(2) Following completion of the ballot information booklet, the director of research shall arrange for its distribution to every residence of one or more active registered electors in the state. Distribution may be accomplished by such means as the director of research deems appropriate to comply with section 1 (7.5) of article V of the state constitution, including, but not limited to, mailing the ballot information booklet to electors and insertion of the ballot information booklet in newspapers of general circulation in the state. The distribution shall be performed pursuant to a contract or contracts bid and entered into after employing standard competitive bidding practices including, but not limited to, the use of requests for information, requests for proposals, or any other standard vendor selection practices determined to be best suited to selecting an appropriate means of distribution and an appropriate contractor or contractors. The executive director of the department of personnel shall provide such technical advice and assistance regarding bidding procedures as deemed necessary by the director of research.

(3) (a) There is hereby established in the state treasury the ballot information publication and distribution revolving fund. Except as otherwise provided in paragraph (b) of this subsection (3), moneys shall be appropriated to the fund each year by the general assembly in the annual general appropriation act. All interest earned on the investment of moneys in the fund shall be credited to the fund. Moneys in the revolving fund are continuously appropriated to the legislative council of the general assembly to pay the costs of publishing the text and title of each constitutional amendment, each initiated or referred measure, or part of a measure, and the text of a referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), in at least one legal publication of general circulation in each county of the state, as required by section 1-40-124, and the costs of distributing the ballot information booklet, as required by subsection (2) of this section. Any moneys credited to the revolving fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund.

(b) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the legislative department of the state government for the fiscal year commencing on July 1, 2006, that are unexpended or not encumbered as of the close of the fiscal year and are not transferred to the legislative expenses cash fund pursuant to section 2-3-1002 (2), C.R.S., shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the ballot information publication and distribution revolving fund created in paragraph (a) of this subsection (3); except that the amount so transferred shall not exceed five hundred thousand dollars.

Source: **L. 94:** Entire section added, p. 1688, § 2, effective January 19, 1995. **L. 96:** (2) amended, p. 1511, § 35, effective July 1. **L. 97:** (3) added, p. 384, § 1, effective April 19. **L. 2000:** (1) and (3) amended and (1.5) added, p. 298, § 4, effective August 2; (1) amended, p. 1623, § 8, effective August 2. **L. 2001:** (1) amended, p. 223, § 1, effective August 8. **L. 2004:** (3) amended, p. 410, § 3, effective April 8. **L. 2005:** (3)(a) amended, p. 759, § 6, effective June 1; (1)(c) repealed and (1.7) added, p. 1371, §§ 2, 1, effective June 6. **L. 2007:** (3)(b) amended, p. 2124, § 2, effective April 11.

Editor's note: (1) Section 5 of chapter 284, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 94-005, enacted at the Second Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 94-005 was January 19, 1995.

(2) Amendments to subsection (1) by Senate Bill 00-172 and House Bill 00-1304 were harmonized.

1-40-125. Mailing to electors. (1) The requirements of this section shall apply to any ballot issue involving a local government matter arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), for which notice is required to be mailed pursuant to section 20 (3) (b) of article X of the state constitution. A mailing is not required for a ballot issue that does not involve a

local government matter arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4).

(2) Thirty days before a ballot issue election, political subdivisions shall mail at the least cost and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "all registered voters" at each address of one or more active registered electors. Except for voter-approved additions, notices shall include only:

(a) The election date, hours, ballot title, text, and local election office address and telephone number;

(b) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change;

(c) For the first full fiscal year of each proposed political subdivision tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase;

(d) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining local district repayment cost;

(e) Two summaries, up to five hundred words each, one for and one against the proposal, of written comments filed with the election officer by thirty days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments.

(3) The provisions of this section shall not apply to a ballot issue that is subject to the provisions of section 1-40-124.5.

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4; (1) amended, p. 1437, § 128, effective July 1. L. 2000: (1) and IP(2) amended and (3) added, p. 299, § 5, effective August 2.

1-40-126. Explanation of effect of "yes" or "no" vote included in notices provided by mailing or publication. In any notice to electors provided by the director of research of the legislative council, whether by mailing pursuant to section 1-40-124.5 or publication pursuant to section 1-40-124, there shall be included the following explanation preceding any information about individual ballot issues: "A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a 'no' vote on any ballot issue is a vote against changing current law or existing circumstances."

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4. L. 2000: Entire section amended, p. 299, § 6, effective August 2.

Editor's note: This section was formerly numbered as section 1-40-114 (3), which was added by House Bill 93-1155.

ANNOTATION

C.J.S. See 82 C.J.S., Statutes, § 129.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The facts upon which depend the question whether an amendment proposed to the constitution has

received the approval of the people will be judicially noticed and the court will resort to all sources of information which may afford satisfactory evidence upon the question. *Harrison v. People ex rel. Whatley*, 57 Colo. 137, 140 P. 203 (1914).

1-40-127. Ordinances - effective, when - referendum. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4. L. 95: Entire section repealed, p. 437, § 19, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-115.

Cross references: For current provisions relating to municipal government ordinances, their effective dates, and related referendums, see § 31-11-105.

1-40-128. Ordinances, how proposed - conflicting measures. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 693, § 1, effective May 4. **L. 95:** Entire section repealed, p. 438, § 20, effective May 8.

Editor's note: This section was formerly numbered as section 1-40-116 (1).

Cross references: For current provisions relating to proposing municipal government ordinances and conflicting measures, see § 31-11-104.

1-40-129. Voting on ordinances. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 694, § 1, effective May 4. **L. 95:** Entire section repealed, p. 438, § 21, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-116 (2), and subsection (2) was formerly numbered as section 1-40-116 (3).

1-40-130. Unlawful acts - penalty. (1) It is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(b) For any person to sign any name other than his or her own to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(c) For any person to knowingly sign any petition who is not a registered elector at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(e) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act which hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(g) For any officer to do willfully any act which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election, or refuse to submit any petition in the form presented for submission at any election;

(h) For any officer or person to violate willfully any provision of this article.

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment.

Source: L. 93: Entire article amended with relocations, p. 694, § 1, effective May 4.

Editor's note: Subsection (1) was formerly numbered as section 1-40-118 (2), and subsection (2) was formerly numbered as section 1-40-118 (3).

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

It is clear from the provisions of the initiative and referendum act and the penalties provided thereby that the general assembly has been careful and diligent to safeguard the primary right of the people to propose and enact their own legislation. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

And the initiative and referendum laws, when invoked by the people, supplant the city council or

1-40-131. Tampering with initiative or referendum petition. Any person who willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition or who willfully neglects to file or delays the delivery of the initiative or referendum petition or who conceals or removes any initiative or referendum petition from the possession of the person authorized by law to have the custody thereof, or who adds, amends, alters, or in any way changes the information on the petition as provided by the elector, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. The language in this section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

Source: L. 93: Entire article amended with relocations, p. 695, § 1, effective May 4.

Editor's note: This section was formerly numbered as section 1-40-118.5.

1-40-132. Enforcement. (1) The secretary of state is charged with the administration and enforcement of the provisions of this article relating to initiated or referred measures and state constitutional amendments. The secretary of state shall have the authority to promulgate rules as may be necessary to administer and enforce any provision of this article that relates to initiated or referred measures and state constitutional amendments. The secretary of state may conduct a hearing, upon a written complaint by a registered elector, on any alleged violation of the provisions relating to the circulation of a petition, which may include but shall not be limited to the preparation or signing of an affidavit by a circulator. If the secretary of state, after the hearing, has reasonable cause to believe that there has been a violation of the provisions of this article relating to initiated or referred measures and state constitutional amendments, he or she shall notify the attorney general, who may institute a criminal prosecution. If a circulator is found to have violated any provision of this article or is otherwise shown to have made false or misleading statements relating to his or her section of the petition, such section of the petition shall be deemed void.

(2) (Deleted by amendment, L. 95, p. 439, § 22, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 695, § 1, effective May 4. **L. 95:** Entire section amended, p. 439, § 22, effective May 8.

Editor's note: Subsection (1) was formerly numbered as section 1-40-119.

ANNOTATION

Subsection (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Read in context, subsection (1)

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addresses violations that involve criminal culpability. The administrative hearing required by subsection (1) is applicable to general proceedings regarding a sufficiency determination. *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996).

Because the people undertake to legislate for themselves. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

And the town or city clerk is required to perform certain statutory duties, in connection therewith, for failure of which he is subject to penalties. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956).

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1-40-133. Retention of petitions. After a period of three years from the time of submission of the petitions to the secretary of state, if it is determined that the retention of the petitions is no longer necessary, the secretary of state may destroy the petitions.

Source: L. 93: Entire article amended with relocations, p. 696, § 1, effective May 4. **L. 95:** Entire section amended, p. 439, § 23, effective May 8.

1-40-134. Withdrawal of initiative petition. The designated representatives of the proponents of an initiative petition may withdraw the petition from consideration as a ballot issue by filing a letter with the secretary of state requesting that the petition not be placed on the ballot. The letter shall be signed and acknowledged by both designated representatives before an officer authorized to take acknowledgments and shall be filed no later than thirty-three days prior to the election at which the initiative is to be voted upon.

Source: L. 98: Entire section added, p. 632, § 1, effective May 6.

ODD-YEAR ELECTIONS

ARTICLE 41

Odd-year Elections

- | | | | |
|-----------|--|-----------|---------------------------------|
| 1-41-101. | Legislative declaration. | 1-41-103. | Local ballot issue elections in |
| 1-41-102. | State ballot issue elections in
odd-numbered years. | | odd-numbered years. |

1-41-101. Legislative declaration. The general assembly hereby finds, determines, and declares that section 20 of article X of the state constitution requires that a ballot issue election be held on the first Tuesday in November of odd-numbered years; that the provisions of section 20 (2) and 20 (3) of said article X are unclear as to what issues can be submitted to a vote in the odd-year election; that section 20 of article X did not amend preexisting provisions of the state constitution on the initiative, the referendum, and the submission of constitutional amendments by the general assembly, and repeal or amendment of such provisions by implication is not presumed; that this legislation implements section 20 of article X of the state constitution, which article is entitled "Revenue" and concerns exclusively government revenue raising and appropriations; that section 20 of article X requires public votes on additional government taxes, spending, or debt; that the language of section 20 of article X evinces the public's desire to have more opportunity to vote on government tax, spending, and debt proposals; that a construction of section 20 of article X that limits local government electors' opportunities to vote on tax, spending, debt, or other proposals would be inconsistent with the ballot title of and the voters' intention in adopting said amendment; that state and local election officials need guidance as to how to administer the November 1993 election; and that, in view of the issues set out in this section, the general assembly should exercise its legislative power to resolve the ambiguities in section 20 of article X in a manner consistent with its terms.

Source: L. 93: Entire article added, p. 1993, § 1, effective June 8.

ANNOTATION

Interpretations of § 20 of article X of the state constitution which would limit the right of the

electorate to vote on tax, spending, debt, or other proposals are not favored. *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

1-41-102. State ballot issue elections in odd-numbered years. (1) At the statewide election to be held on the first Tuesday of November in 1993, and in each odd-numbered year thereafter, the following issues shall appear on the ballot if they concern state matters arising under section 20 of article X of the state constitution and if they are submitted in accordance with applicable law:

(a) Amendments to the state constitution submitted by the general assembly in accordance with article XIX of the state constitution;

(b) State legislation and amendments to the state constitution initiated in accordance with section 1 of article V of the state constitution and article 40 of this title;

(c) Measures referred to the people by the general assembly in accordance with section 1 of article V of the state constitution;

(d) Measures referred to the people pursuant to petitions filed against an act or item, section, or part of an act of the general assembly in accordance with section 1 of article V of the state constitution;

(e) Questions which are referred to the people by the general assembly in accordance with the law prescribing procedures therefor;

(f) Questions which are initiated by the people in accordance with the law prescribing procedures therefor.

(2) If no questions concerning state matters arising under section 20 of article X of the state constitution are referred or initiated as provided in subsection (1) of this section, no statewide election shall be held on the first Tuesday of November in 1993, or on the first Tuesday in November of any subsequent odd-numbered year.

(3) As used in this section, a "question" means a proposition which is in the form of a question meeting the requirements of section 20 (3) (c) of article X of the state constitution and which is submitted in accordance with the law prescribing procedures therefor without reference to specific state legislation or a specific amendment to the state constitution.

(4) As used in this section, "state matters arising under section 20 of article X of the state constitution" includes:

(a) Approval of a new tax, tax rate increase, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain pursuant to section 20 (4) (a) of article X of the state constitution;

(b) Approval of the creation of any multiple-fiscal year direct or indirect state debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years pursuant to section 20 (4) (b) of article X of the state constitution;

(c) Approval of emergency taxes pursuant to section 20 (6) of article X of the state constitution;

(d) Approval of revenue changes pursuant to section 20 (7) of article X of the state constitution;

(e) Approval of a delay in voting on ballot issues pursuant to section 20 (3) (a) of article X of the state constitution;

(f) Approval of the weakening of a state limit on revenue, spending, and debt pursuant to section 20 (1) of article X of the state constitution.

Source: L. 93: Entire article added, p. 1994, § 1, effective June 8.

ANNOTATION

Board had the authority to set a title, ballot title and submission clause, and summary for the proposed constitutional amendment at issue, but the question of the board's jurisdiction to set titles for a ballot

issue in an odd-numbered year was premature, as the secretary of state, not the board, has the authority to place measures on the ballot. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

1-41-103. Local ballot issue elections in odd-numbered years. (1) At the local election to be held on the first Tuesday of November in 1993, and in each odd-numbered year thereafter, the following issues shall appear on the ballot if they concern local government matters arising under section 20 of article X of the state constitution and if they are submitted in accordance with applicable law:

(a) Amendments to the charter of any home rule city or home rule county initiated by the voters or submitted by the legislative body of the home rule city or county in accordance with said charter;

(b) Ordinances, resolutions, or franchises proposed in accordance with section 1 of article V of the state constitution and section 31-11-104, C.R.S.;

(c) Measures referred to the people pursuant to petitions filed against an ordinance, resolution, or franchise passed by the legislative body of any local government in accordance with section 1 of article V of the state constitution and section 31-11-105, C.R.S.;

(d) Questions which are referred to the people by the governing body of the local government in accordance with the law prescribing procedures therefor;

(e) Questions which are initiated by the people in accordance with the law prescribing procedures therefor.

(2) As used in this section, "local government" means a county, a municipality as defined in section 31-1-101 (6), C.R.S., a school district, or a special district as defined in sections 32-1-103 (20) and 35-70-109, C.R.S.

(3) As used in this section, a "question" means a proposition which is in the form of a question meeting the requirements of section 20 (3) (c) of article X of the state constitution and which is submitted in accordance with the law prescribing procedures therefor without reference to a specific ordinance, resolution, franchise, or other local legislation or a specific amendment to the charter of a home rule city or home rule county.

(4) As used in this section, "local government matters arising under section 20 of article X of the state constitution" includes:

(a) Approval of a new tax, tax rate increase, mill levy above that for the prior year, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain pursuant to section 20 (4) (a) of article X of the state constitution;

(b) Approval of the creation of any multiple-fiscal year direct or indirect debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years pursuant to section 20 (4) (b) of article X of the state constitution;

(c) Approval of emergency taxes pursuant to section 20 (6) of article X of the state constitution;

(d) Approval of revenue changes pursuant to section 20 (7) of article X of the state constitution;

(e) Approval of a delay in voting on ballot issues pursuant to section 20 (3) (a) of article X of the state constitution;

(f) Approval of the weakening of a local limit on revenue, spending, and debt pursuant to section 20 (1) of article X of the state constitution.

(5) The submission of issues at elections in November of odd-numbered years in accordance with this section, or at other elections as provided in section 20 (3) (a) of article X of the state constitution, shall not be deemed the exclusive method of submitting local issues to a vote of the people, and nothing in this section shall be construed to repeal, diminish, or otherwise affect in any way the authority of local governments to hold issue elections in accordance with other provisions of law.

(6) As the city of Broomfield will become the city and county of Broomfield on November 15, 2001, and the citizens of the city and county of Broomfield will no longer be located in Adams, Boulder, Jefferson, and Weld counties and will not be directly affected by the election results of ballot issues in those counties, the ballot for the registered voters of the city of Broomfield for the odd-year election to be held on November 6, 2001, shall exclude any local ballot issue pertaining to Adams, Boulder, Jefferson, and Weld counties that, by the terms of such ballot issue or as mandated by law, takes effect on or after November 15, 2001, so long as such ballot issue does not directly or indirectly impose any burden, obligation, or limitation upon the city and county of Broomfield or its citizens.

(7) As the city of Broomfield will become the city and county of Broomfield on November 15, 2001, the ballot for the registered voters of the city of Broomfield for the odd-year election to be held on November 6, 2001, may include any local ballot issue pertaining to the city and county of Broomfield that, by the terms of such ballot issue or as mandated by law, takes effect on or after November 15, 2001.

Source: L. 93: Entire article added, p. 1995, § 1, effective June 8. L. 94: (1)(b) and (1)(c) amended, p. 1622, § 6, effective May 31. L. 95: (1)(b) and (1)(c) amended, p. 439, § 24, effective May 8. L. 2001: (6) and (7) added, p. 273, § 31, effective March 30.

ANNOTATION

Proposed amendments to home-rule charters and local initiated or referred measures concerning issues arising under the provisions of article X, § 20, of

the state constitution may be submitted to the people for a vote at a local election held on the first Tuesday of November in odd-numbered years. The provisions of article X, § 20 (3), apply only to issues of government

financing, spending, and taxation governed by article X, § 20. *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996).

Legislation that furthers the purpose of self-executing constitutional provisions or that facilitates their enforcement is permissible. The general assembly did not

exceed its authority by enacting legislation to resolve the ambiguity in article X, § 20, of the state constitution. *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996).

The term "referred measure" is defined in § 1-1-104 (34.5) to include any ballot question or ballot issue submitted to its eligible electors by any local governmental entity. Such referred measures encompass approval of revenue changes pursuant to § 20 (7) of article X of the state constitution referenced in subsection (4)(d). *Havens v. Bd. of County Comm'rs*, 924 P.2d 517 (Colo. 1996).

ELECTION CAMPAIGN REGULATIONS

ARTICLE 45

Fair Campaign Practices Act

Editor's note: (1) This article was originally enacted in 1974. The substantive provisions of this article were repealed and reenacted by initiative in 1996, causing some addition, relocation, and elimination of sections as well as subject matter. The vote count on the measure at the general election held November 5, 1996, was as follows:

FOR: 928,148
AGAINST: 482,551

(2) For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1996; and the comparative table located in the back of the index.

Cross references: For public official disclosure law, see part 2 of article 6 of title 24.

Law reviews: For article, "Fair Campaign Practices Act: Killing Trees for Good Government", see 26 Colo. Law. 101 (September 1997). For article, "Public Moneys and Ballot Issues Under the Fair Campaign Practices Act", see 34 Colo. Law. 81 (September 2005).

1-45-101.	Short title.	1-45-110.	Candidate affidavit - disclosure statement.
1-45-102.	Legislative declaration.	1-45-111.	Duties of the secretary of state - enforcement. (Repealed)
1-45-103.	Definitions.	1-45-111.5.	Duties of the secretary of state - enforcement.
1-45-103.7.	Contribution limits - definitions.	1-45-112.	Duties of municipal clerk and county clerk and recorder.
1-45-104.	Contribution limits. (Repealed)	1-45-112.5.	Immunity from liability for fine or penalty.
1-45-105.	Voluntary campaign spending limits. (Repealed)	1-45-113.	Sanctions. (Repealed)
1-45-105.3.	Contribution limits. (Repealed)	1-45-114.	Expenditures - political advertising - rates and charges.
1-45-105.5.	Contributions to members of general assembly and governor during consideration of legislation.	1-45-115.	Encouraging withdrawal from campaign prohibited.
1-45-106.	Unexpended campaign contributions.	1-45-116.	Home rule counties and municipalities.
1-45-107.	Independent expenditures. (Repealed)	1-45-117.	State and political subdivisions - limitations on contributions.
1-45-108.	Disclosure.	1-45-118.	Severability.
1-45-108.5.	Political organizations - disclosure.		
1-45-109.	Filing - where to file - timeliness.		

1-45-101. Short title. This article shall be known and may be cited as the "Fair Campaign Practices Act".

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-101 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-102. Legislative declaration. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-102 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Appropriate officer" shall have the same meaning as set forth in section 2 (1) of article XXVIII of the state constitution.

(2) "Candidate" shall have the same meaning as set forth in section 2 (2) of article XXVIII of the state constitution.

(3) "Candidate committee" shall have the same meaning as set forth in section 2 (3) of article XXVIII of the state constitution.

(4) "Candidate committee account" shall mean the account established by a candidate committee with a financial institution pursuant to section 3 (9) of article XXVIII of the state constitution.

(5) "Conduit" shall have the same meaning as set forth in section 2 (4) of article XXVIII of the state constitution.

(6) (a) "Contribution" shall have the same meaning as set forth in section 2 (5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(c) "Contribution" also includes:

(I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this article, "domestic corporation" shall mean a for-profit or nonprofit corporation incorporated under and subject to the laws of this state, and "foreign corporation" shall mean a corporation incorporated under and subject to the laws of another state or foreign country.

(8) "Election cycle" shall have the same meaning as set forth in section 2 (6) of article XXVIII of the state constitution.

(9) "Electioneering communication" shall have the same meaning as set forth in section 2 (7) of article XXVIII of the state constitution.

(10) "Expenditure" shall have the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(11) "Independent expenditure" shall have the same meaning as set forth in section 2 (9) of article XXVIII of the state constitution.

(12) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.

(13) "Person" shall have the same meaning as set forth in section 2 (11) of article XXVIII of the state constitution.

(14) "Political committee" shall have the same meaning as set forth in section 2 (12) of article XXVIII of the state constitution.

(14.5) "Political organization" means a political organization defined in section 527 (e) (1) of the federal "Internal Revenue Code of 1986", as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code. "Political organization" shall not be construed to have the same meaning as "political organization" as defined in section 1-1-104 (24) for purposes of the "Uniform Election Code of 1992", articles 1 to 13 of this title.

(15) "Political party" shall have the same meaning as set forth in section 2 (13) of article XXVIII of the state constitution.

(16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.

(16.5) "Spending" means funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

(17) "Subsidiary" means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) "Unexpended campaign contributions" shall have the same meaning as set forth in section 2 (15) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) added and (8) amended, p. 223, § 1, effective April 10; (1.5) amended and (14) added, p. 954, § 1, effective May 27. **L. 99:** (5) amended, p. 1390, § 12, effective June 4. **L. 2000:** (1.3), (4)(a)(V), and (4.5) added and (4)(a)(III), (10)(b), and (12) amended, pp. 122, 123, §§ 2, 3, effective March 15; (8) amended, p. 1724, § 1, effective June 1. **L. 2002:** (8)(a)(I) amended and (8)(a)(III) added, p. 198, § 1, effective April 3; (1.5) and (2) amended, p. 1576, § 1, effective July 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002. **L. 2003:** Entire section RC&RE, p. 2156, § 1, effective June 3. **L. 2007:** (7) amended, p. 1766, § 1, effective June 1; (6)(c), (14.5), and (16.5) added, pp. 1225, 1224, §§ 2, 1, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-103 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

(3) Section 4 of chapter 289, Session Laws of Colorado 2007, provides that the act enacting subsections (6)(c), (14.5), and (16.5) applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2007, and for any election cycle or calendar year commencing after July 1, 2007, whichever is applicable.

ANNOTATION

Annotator's note. Since § 1-45-103 is similar to § 1-45-103 as it existed prior to its repeal in 2002, relevant cases construing that provision and its predecessors have been included in the annotations to this section.

It is apparent from the plain language of subsection (2) that a candidate committee may be comprised of one person only and that the candidate acting alone may be a candidate committee. Thus, a candidate committee who acts alone for the purpose of receiving campaign contributions or making campaign expenditures is a candidate committee subject to the disclosure requirements of this article. Therefore, the expenditures made by a candidate from the candidate's personal funds before certification of his or her committee were either contributions to the ultimately certified candidate committee or expenditures by a separate campaign committee composed of the candidate alone. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of *Buckley v. Valeo*, 424 U.S. 1 (1976), the court holds that the definition of "contribution" contained in subsection (4) does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Phrases unconstitutional. The phrase in subsection (7), "which unambiguously refer to any specific public office or candidate for such office, but does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business and political messages sent solely to their members[.]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The phrase in subsection (11), "or which unambiguously refers to such candidate[.]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The court concluded that the unconstitutional phrases were severable and declared subsections (7) and (11) invalid only insofar as they reach beyond that which

may constitutionally be regulated. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d

1174 (10th Cir. 2000).

Term "independent expenditure" in subsection (7) permits the regulation of only those expenditures that are used for communications that expressly advocate the election or defeat of a clearly identified candidate. This standard includes the words and phrases listed in *Buckley v. Valeo*, 424 U.S. 1 (1976), and other substantially similar or synonymous words. This approach remains focused on actual words, as contrasted with images, symbols, or other contextual factors, provides adequate notice in light of due process concerns, and strikes an appropriate balance between trying to preserve the goals of campaign finance reform and protecting political speech. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

None of the advertisements of so-called educational committee at issue amounted to "express advocacy" as that term is applied in *Buckley* and progeny and, therefore, so-called educational committee was not subject to the requirements of the Fair Campaign Practices Act. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The term "issue" in subsection (8) includes an initiative that has gone through the title-setting process, but has not been formally certified for the election ballot. To construe the term to include only measures actually placed on the ballot would frustrate the purposes of the Campaign Reform Act by allowing groups to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not to sign a particular petition, thus significantly influencing its success or failure. *Colo. for Family Values v. Meyer*, 936 P.2d 631 (Colo. App. 1997).

Telephone opinion poll was not "electioneering" and thus did not constitute an "electioneering communication" within the meaning of subsection (9) of this section and § 6 of article XXVIII of the state constitution. In giving effect to the intent of the electorate, court gives term "communication" its plain and ordinary meaning. Court relies upon dictionary definitions of "communication" that contemplate imparting a message to, rather than having mere contact with, another party. In reviewing scripts used by telephone opinion pollster, "communication" occurred because "facts, information, thoughts, or opinions" were "imparted, transmitted, interchanged, expressed, or exchanged" by pollster to those it called. Telephone opinion pollster, therefore, communicated information to members of the electorate during its opinion poll. *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (Colo. App. 2006).

Telephone opinion poll, however, did not satisfy meaning of electioneering. Colorado electorate intended

article XXVIII to regulate communication that expresses "electorate advocacy" and tends to "influence the outcome of Colorado elections". This conclusion is reinforced by plain and ordinary meaning of term "electioneering". Court relies upon dictionary definitions suggesting that "electioneering" is defined by such activities as taking an active part in an election campaign, campaigning for one's own election, or trying to sway public opinion especially by the use of propaganda and that "campaigning" means influencing the public to support a particular candidate, ticket, or measure. Here, telephone opinion poll did not seek to influence voters or sway public opinion but instead merely asked neutral questions to collect data and measure public opinion. Accordingly, telephone opinion poll did not constitute an "electioneering communication" under subsection (9) of this section and article XXVIII of the state constitution. *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (Colo. App. 2006).

The term "issue committee" covers only those issue committees that were formed for the purpose of supporting or opposing a ballot initiative. An association that was formed and operated for purposes other than "accepting contributions or making expenditures to support or oppose any ballot issue or ballot question" does not become an "issue committee" as defined in this section if, at a future point in time, it engages in those activities with regard to a specific ballot issue or ballot question. *Common Sense Alliance v. Davidson*, 995 P.2d 748 (Colo. 2000).

A "political committee" is formed when two or more persons associate themselves with the original purpose of making independent expenditures. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The term "political committee" in subsection (10) includes a for-profit corporation which makes contributions, contributions in kind, or expenditures to or on behalf of state political campaigns out of its ordinary corporate treasury. Therefore, such corporation is required to file a statement of organization, to report its contributions, contributions in kind, and expenditures, and otherwise to comply with any filing and reporting requirements of the "Campaign Reform Act of 1974". *Colo. Common Cause v. Meyer*, 758 P.2d 153 (Colo. 1988) (decided prior to 1988 amendment to subsection (10)).

While the stated purposes for the formation of an organization may be one criterion upon which to determine whether it is a "political committee", such purposes are not conclusive. To so hold would permit regulable conduct to escape regulation merely because the stated purposes were misleading, ambiguous, fraudulent, or all three. In addition, such a holding would exalt form over

substance and would almost entirely eviscerate the Fair Campaign Practices Act and make a mockery of legitimate attempts at campaign finance reform. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The use of the disjunctive term "or" in subsection (11) renders the definition of "political message" applicable to messages that "unambiguously refer to a candidate", even if such messages do not also "advocate the election or defeat" of that candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

To qualify as a political message under subsection (11), a message need only: (1) Be delivered by telephone, any print or electronic media, or other written material, and (2) either (a) advocate the election or defeat of any candidate or (b) unambiguously refer to such candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Voter guides that unambiguously refer to specific candidates but do not expressly advocate the election or defeat of any candidate constitute "political messages" as defined in subsection (11). Therefore, the funds expended to produce and disseminate the voter guides are subject to regulation as "independent expenditures" as the term is defined in subsection (7). *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Administrative law judge (ALJ) did not err in concluding that definition of "expenditures" did not apply to metropolitan district boards. Respondents had argued that the metropolitan districts qualified as "persons" that could expend payments on behalf of issue committee supporting ballot issue. Even if the definition of "person" could be stretched to cover political subdivisions of the state such as metropolitan districts, respondents failed to explain how the payments at issue were "made with the prior knowledge and consent of an agent" of the issue committee that was not yet formed in order to bring such payments within the definition of "expenditure". *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

ALJ did not err by interpreting "expenditure" to occur when a payment is made and when there is a contractual agreement and the amount is determined. The use of the disjunctive "or" in the definition of "expenditure" indicates that an expenditure is made if either criterion is met after the ballot title is submitted. *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

1-45-103.7. Contribution limits - definitions. (1) Nothing in article XXVIII of the state constitution or this article shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee.

(2) A political committee may receive and accept moneys contributed to such committee by a corporation or labor organization pursuant to subsection (1) of this section for disbursement to a candidate committee or political party without depositing such moneys in an account separate from the

account required to be established for the receipt and acceptance of all contributions by all committees or political parties in accordance with section 3 (9) of article XXVIII of the state constitution.

(3) A candidate committee may accept:

(a) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a primary election at any time after the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot; or

(b) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a general election at any time prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot.

(4) A candidate committee may expend contributions received and accepted for a general election prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot. A candidate committee established in the name of a candidate who wins the primary election may expend contributions received and accepted for a primary election in the general election.

(5) (a) No limited liability company shall make any contribution to a candidate committee or political party if one or more of the individual members of the limited liability company is:

(I) A corporation;

(II) A labor organization;

(III) A natural person who is not a citizen of the United States;

(IV) A foreign government;

(V) A professional lobbyist, volunteer lobbyist, or the principal of a professional or volunteer lobbyist, and the contribution is prohibited under section 1-45-105.5 (1); or

(VI) Otherwise prohibited by law from making the contribution.

(b) No limited liability company shall make any contribution to a political committee if one or more of the individual members of the limited liability company is:

(I) An entity formed under and subject to the laws of a foreign country;

(II) A natural person who is not a citizen of the United States; or

(III) A foreign government.

(c) Notwithstanding any other provision of this subsection (5), no limited liability company shall make any contribution to a candidate committee or political party if either the limited liability company has elected to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 or any successor provision or the shares of the limited liability company are publicly traded. A contribution by a limited liability company with a single natural person member that does not elect to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 shall be attributed only to the single natural person member.

(d) (I) Any limited liability company that is authorized to make a contribution shall, in writing, affirm to the candidate committee, political committee, or political party to which it has made a contribution, as applicable, that it is authorized to make a contribution, which affirmation shall also state the names and addresses of all of the individual members of the limited liability company. No candidate committee, political committee, or political party shall accept a contribution from a limited liability company unless the written affirmation satisfying the requirements of this paragraph (d) is provided before the contribution is deposited by the candidate committee, political committee, or political party. The candidate committee, political committee, or political party receiving the contribution shall retain the written affirmation for not less than one year following the date of the end of the election cycle during which the contribution is received.

(II) Any contribution by a limited liability company, and the aggregate amount of contributions from multiple limited liability companies attributed to a single member of any such company under this subparagraph (II), shall be subject to the limits governing such contributions under section 3 of article

XXVIII of the state constitution. A limited liability company that makes any contribution to a candidate committee, political committee, or political party shall, at the time it makes the contribution, provide information to the recipient committee or political party as to how the contribution is to be attributed among the members of the limited liability company. The limited liability company shall then attribute the contribution to its members against the aggregate contribution limit applicable to multiple limited liability companies under this subparagraph (II); except that the aggregate amount of contributions from multiple limited liability companies attributed to a single member shall not exceed the contribution limits in section 3 of article XXVIII of the state constitution. Nothing in this subparagraph (II) shall be construed to restrict a natural person from making a contribution in his or her own name to any committee or political party to the extent authorized by law.

(6) No foreign corporation shall be permitted to make any contribution under article XXVIII of the state constitution or this article that a domestic corporation is prohibited from making under article XXVIII of the state constitution or this article.

(7) (a) Any person who believes that a violation of subsection (5) or (6) of this section has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The complaint shall be subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution.

(b) Any person who has violated any of the provisions of paragraph (a), (b), or (c) of subsection (5) or subsection (6) of this section shall be subject to a civil penalty of at least double and up to five times the amount contributed or received in violation of the applicable provision.

(c) Any person who has violated any of the provisions of subparagraph (I) of paragraph (d) of subsection (5) of this section shall be subject to a civil penalty of fifty dollars per day for each day that the written affirmation regarding the membership of a limited liability company has not been filed with or retained by the candidate committee, political committee, or political party to which a contribution has been made.

(8) As used in this section, "limited liability company" includes any form of domestic entity as defined in section 7-90-102 (13), C.R.S., or foreign entity as defined in section 7-90-102 (23), C.R.S.; except that, as used in this section, "limited liability company" shall not include a domestic corporation, a domestic cooperative, a domestic nonprofit association, a domestic nonprofit corporation, a foreign corporation, a foreign cooperative, a foreign nonprofit association, or a foreign nonprofit corporation, as those terms are defined in section 7-90-102, C.R.S.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. L. 2004: Entire section amended, p. 863, § 1, effective May 21. L. 2007: (5), (6), (7), and (8) added, p. 1766, § 2, effective June 1.

Editor's note: Section 3 of chapter 396, Session Laws of Colorado 2007, provides that the act enacting subsections (5), (6), (7), and (8) applies to the portion of any election cycle or for the portion of the calendar year remaining after June 1, 2007, and for any election cycle or calendar year commencing after June 1, 2007, whichever is applicable.

1-45-104. Contribution limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. L. 98: (13)(a)(II) amended, p. 632, § 2, effective May 6; (13)(c) amended, p. 950, § 1, effective May 27; (14) added, p. 955, § 2, effective May 27. L. 99: IP(2) amended, p. 1391, § 13, effective June 4. L. 2000: Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-111 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105. Voluntary campaign spending limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (3) amended, p. 951, § 2, effective May 27. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-112 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105.3. Contribution limits. (Repealed)

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. **L. 2002:** (4)(a.5) added, p. 1929, § 1, effective June 7. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Subsections (7), (8), (9), (10), and (11) were formerly numbered as 1-45-104 (9), (10), (11), (12), and (14) respectively.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

ANNOTATION

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of *Buckley v. Valeo*, 424 U.S. 1 (1976),

the court holds that the definition of "contribution" does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation. (1) (a) No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to, or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session;

(II) (A) The governor or a candidate for governor when the general assembly is in regular session or when any measure adopted by the general assembly in a regular session is pending before the governor for approval or disapproval; or

(B) The lieutenant governor, the secretary of state, the state treasurer, the attorney general, or a candidate for any of such offices when the general assembly is in regular session.

(b) As used in this subsection (1):

(I) "Principal" means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. One does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist.

(II) The terms "professional lobbyist" and "volunteer lobbyist" shall have the meanings ascribed to them in section 24-6-301, C.R.S.

(c) (I) Nothing contained in this subsection (1) shall be construed to prohibit lobbyists and their principals from raising money when the general assembly is in regular session or when regular session

legislation is pending before the governor, except as specifically prohibited in paragraph (a) of this subsection (1).

(II) Nothing contained in this subsection (1) shall be construed to prohibit a lobbyist or principal of a lobbyist from participating in a fund-raising event of a political party when the general assembly is in regular session or when regular session legislation is pending before the governor, so long as the purpose of the event is not to raise money for specifically designated members of the general assembly, specifically designated candidates for the general assembly, the governor, or specifically designated candidates for governor.

(III) A payment by a lobbyist or a principal of a lobbyist to a political party to participate in such a fund-raising event shall be reported as a contribution to the political party pursuant to section 1-45-108; except that, if the lobbyist or principal of a lobbyist receives a meal in return for a portion of the payment, only the amount of the payment in excess of the value of the meal shall be considered a contribution to the political party. The political party shall determine the value of the meal received for such payment, which shall approximate the actual value of the meal.

(IV) A gift of a meal described in subparagraph (III) of this paragraph (c) by a lobbyist or a principal of a lobbyist to an incumbent in or a candidate elected to any office described in paragraph (a) of this subsection (1) shall be reported as follows:

(A) The lobbyist shall report the value of the meal in the lobbyist disclosure statement filed pursuant to section 24-6-302, C.R.S.

(B) The incumbent or candidate shall report the value of the meal in the public official disclosure statement filed pursuant to section 24-6-203, C.R.S.

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15.

Editor's note: This section was formerly numbered as 1-45-104 (13).

1-45-106. Unexpended campaign contributions. (1) (a) (I) Subject to the requirements of section 3 (3) (e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 1-45-105.3 (4) (b) and (c), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(I) Voter registration;

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

(III) Postsecondary educational scholarships;

(IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;

(V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3) (e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-109 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. *Citizens for Responsible Gov't State Political Action Comm. v. Buckley*, 60 F. Supp.2d 1066 (D. Colo. 1999).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. To accomplish the purpose of subsection (5), it is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds

reportedly available to a candidate committee and would be confusing to those who read the report. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

Candidate committee permitted to use unexpended contributions to pay elected state senator's legal fees. Although legal fees are not specifically mentioned as permissible expenses under subsection (1)(b)(V), the words "including, but not limited to," indicate that the statute merely illustrates the kinds of expenses that may be regarded as directly related to an elected official's duties. Here, the legal fees may properly be characterized as directly related to official duties of elected state senator. The senator's duties include filing periodic reports with the secretary of state, and the fees were reasonably necessary to demonstrate that senator and his or her committee had properly performed this duty. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

1-45-107. Independent expenditures. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-110.5 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's

proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-108. Disclosure. (1) (a) (I) All candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

(II) In the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making such contribution of two hundred fifty dollars or more is a natural person, the disclosure required by this section shall also include the person's occupation and employer.

(b) (Deleted by amendment, L. 2003, p. 2158, § 3, effective June 3, 2003.)

(c) A candidate committee in a special district election shall not be required to file reports under this section until the committee has received contributions or made expenditures exceeding twenty dollars in the aggregate.

(d) For purposes of this section, a political party shall be treated as a separate entity at the state, county, district, and local levels.

(e) A candidate's candidate committee may reimburse the candidate for expenditures the candidate has made on behalf of the candidate committee. Any such expenditures may be reimbursed at any time. Notwithstanding any other provision of law, any expenditure reimbursed to the candidate by the candidate's candidate committee within the election cycle during which the expenditure is made shall be treated only as an expenditure and not as a contribution to and an expenditure by the candidate's candidate committee. Notwithstanding the date on which any such expenditure is reimbursed, the expenditure shall be reported at the time it is made in accordance with the requirements of this section.

(2) (a) (I) Except as provided in subsections (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state shall be filed:

(A) Quarterly in off-election years no later than the fifteenth calendar day following the end of the applicable quarter;

(B) On the first Monday in July and on each Monday every two weeks thereafter before the primary election;

(C) On the first day of each month beginning the sixth full month before the major election; except that no monthly report shall be required on the first day of the month in which the major election is held;

(D) On the first Monday in September and on each Monday every two weeks thereafter before the major election;

(E) Thirty days after the major election in election years; and

(F) Fourteen days before and thirty days after a special legislative election held in an off-election year.

(II) Such reports that are required to be filed with the county clerk and recorder or with the municipal clerk shall be filed on the twenty-first day and on the Friday before and thirty days after the

primary election, where applicable, and the major election in election years and annually in off-election years on the first day of the month in which the anniversary of the major election occurs.

(III) For purposes of this section, "election year" means every even numbered year for political parties and political committees and each year in which the particular candidate committee's candidate, or issue committee's issue, appears on the ballot; and "major election" means the election that decides an issue committee's issue and the election that elects a person to the public office sought by the candidate committee's candidate.

(IV) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(b) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee or party.

(c) All reports filed with the secretary of state pursuant to this subsection (2) shall be for the reporting periods established pursuant to rules promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(d) A candidate committee for a former officeholder or a person not elected to office that has no change in the balance of funds maintained by such committee, receives no contributions, makes no expenditures, and enters into no obligations during a reporting period shall not be required to file a report under this section for such period.

(e) The reporting period for all reports required to be filed with the county clerk and recorder or with the municipal clerk shall close five calendar days prior to the effective date of filing.

(2.3) Repealed.

(2.5) In addition to any report required to be filed with the secretary of state under this section, all candidate committees, political committees, issue committees, and political parties shall file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election or general election. This report shall be filed with the secretary of state no later than twenty-four hours after receipt of said contribution.

(2.7) Any candidate or candidate committee supporting any candidate, including an incumbent, in a recall election, shall file reports of contributions and expenditures with the appropriate officer fourteen and seven days before the recall election and thirty days after the recall election.

(3) Except as otherwise provided in subsection (3.5) of this section, all candidate committees, political committees, issue committees, small donor committees, and political parties shall register with the appropriate officer before accepting or making any contributions. Registration shall include a statement listing:

- (a) The organization's full name, spelling out any acronyms used therein;
- (b) A natural person authorized to act as a registered agent;
- (c) A street address and telephone number for the principle place of operations;
- (d) All affiliated candidates and committees;
- (e) The purpose or nature of interest of the committee or party;
- (f) Any intent of the candidate committee, political committee, issue committee, small donor committee, or political party to electronically file reports required by this article that may be filed electronically on a web site operated and maintained by the secretary of state pursuant to section 1-45-109.

(3.5) Any political committee that has registered with the federal election commission may file with the appropriate officer a copy of the registration filed with the federal election commission and, insofar as such registration contains substantially the same information required by subsection (3) of this section, the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of this section and, therefore, shall be authorized to accept or make contributions as permitted by law. Any political committee that satisfies the requirements of this

subsection (3.5) shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees.

(4) For purposes of subsection (3) of this section, a political committee in existence on January 1, 1997, shall register with the secretary of state on or before April 1, 1997, pursuant to the requirements of this act.

(5) The registration and reporting requirements of this section shall not apply to that part of the organizational structure of a political party which is responsible for only the day-to-day operations of such political party at the national level if copies of the reports required to be filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended, are filed with the secretary of state and include the information required by this section.

(6) Any issue committee whose purpose is the recall of any elected official shall file a committee registration with the appropriate officer within ten business days of receiving its first contribution. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1), (2)(a), and IP(3) amended, p. 223, § 2, effective April 10; (2)(c) added, p. 951, § 3, effective May 27. **L. 99:** (2)(a) amended and (2)(c)(V) and (2)(c)(VI) added, p. 1391, §§ 14, 15, effective June 4. **L. 2000:** (2)(a) and (2)(c) amended and (2)(d), (2.3), and (2.5) added, pp. 124, 125, §§ 5, 6, effective March 15; (1) amended, p. 1725, § 2, effective June 1; (2)(e) added, p. 791, § 2, effective August 2. **L. 2001:** (3)(f) added, p. 808, § 1, effective August 8; (2.3) amended, p. 1111, § 2, effective September 1. **L. 2002:** IP(2)(a)(I) and (6) amended and (2.7) added, p. 198, § 2, effective April 3; (1)(c) added, p. 1640, § 33, effective June 7. **L. 2003:** (1)(a), (1)(b), (2.3)(a), (2.5), IP(3), and (3)(f) amended and (1)(d) added, p. 2158, § 3, effective June 3. **L. 2004:** (1)(e) and (3.5) added and IP(3) amended, p. 864, §§ 2, 3, effective May 21. **L. 2007:** IP(2)(a)(I) amended, p. 2017, § 2, effective June 1; IP(2)(a)(I) and (2)(a)(I)(B) amended, p. 1299, § 2, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-108 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Subsections (2)(a)(I) and (2)(a)(II) as they existed prior to March 15, 2000, were renumbered on revision as (2)(a)(III) and (2)(a)(IV).

(3) Subsection (2.3)(b) provided for the repeal of subsection (2.3), effective January 1, 2007. (See L. 2001, p. 1111.)

ANNOTATION

Law reviews. For article, "Campaign Finance and 527 Organizations: Keeping Big Money in Politics", see 34 Colo. Law. 71 (July 2005).

Under subsection (1)(a), candidate committees must disclose all expenditures and obligations, even if no contributions are received. Thus, if a candidate runs without a separate committee and finances the campaign from personal funds, the candidate is a candidate committee and must disclose

expenditures and obligations as required by subsection (1)(a). Nothing in subsection (1)(a) indicates that expenditures must be reported only if drawn on outside contributions. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Here, both candidate and the candidate committee made expenditures under the authority of the candidate. Thus, both the candidate and the committee were candidate committees or the candidate was acting through the formed committee. In either instance, the expenditures were subject to the disclosure requirements of

subsection (1)(a). Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Act is neither unconstitutionally vague nor unconstitutionally overbroad. As to candidate's vagueness argument, court finds that act provides sufficient notice to persons of ordinary intelligence that expenditures, regardless of the source of the funds, must be reported. As to candidate's arguments that act is unconstitutionally overbroad and inhibits basic first amendment freedoms, court finds that, construed to preserve its constitutionality, the act does not inhibit a candidate's expenditures of personal funds so long as those expenditures are made through a candidate committee and reported in accordance with this section. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. It is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political

party would artificially inflate the amount of funds reportedly available to a candidate committee and would be

confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

1-45-108.5. Political organizations - disclosure. (1) Any political organization shall report to the appropriate officer in accordance with the requirements of sections 1-45-108 and 1-45-109:

(a) Any contributions it receives, including the name and address of each person who has contributed twenty dollars or more to the political organization in the reporting period, and the occupation and employer of each natural person who has made a contribution of one hundred dollars or more to the political organization; and

(b) Any spending by the political organization that exceeds twenty dollars in any one reporting period.

(2) No political organization shall accept a contribution, or undertake spending, in currency or coin exceeding one hundred dollars.

(3) Nothing in this section shall be construed to:

(a) Require any political organization to make any additional disclosure pursuant to this section to the extent the political organization is already providing disclosure as a committee or political party in a manner that satisfies the requirements of sections 1-45-108 and 1-45-109; or

(b) Authorize the secretary of state to require disclosure of the name of any natural person that is a member of an entity unless the natural person has made a contribution to a political organization in the amount of twenty dollars or more in a reporting period.

Source: L. 2007: Entire section added, p. 1225, § 3, effective July 1.

Editor's note: Section 4 of chapter 289, Session Laws of Colorado 2007, provides that the act enacting this section applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2007, and for any election cycle or calendar year commencing after July 1, 2007, whichever is applicable.

1-45-109. Filing - where to file - timeliness. (1) For the purpose of meeting the filing and reporting requirements of this article, candidates for state wide office, the general assembly, district attorney, district court judge, or any office representing more than one county, except candidates for school district director; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications shall file with the secretary of state. Candidates in municipal elections, their candidate committees, any political committee in support of or in opposition to such candidate, an issue committee supporting or opposing a municipal ballot issue, and small donor committees making contributions to such candidates shall file with the municipal clerk. Candidates in special district elections, except candidates for director of the regional transportation district; the candidate committees of such candidates; political committees in support of or in opposition to such candidates; issue committees supporting or opposing a special district ballot issue; and small donor committees making contributions to such candidate shall file with the clerk and recorder of the county in which the district court having jurisdiction over the special district pursuant to section 32-1-303, C.R.S., is located. All other candidates, candidate committees, issue committees, political committees, and small donor committees shall file with the county clerk and recorder of the county of their residence. However, a report required to be filed with a county clerk and recorder shall be deemed properly filed if filed electronically pursuant to subsection (8) of this section.

(2) (a) Reports required to be filed by this article are timely if received by the appropriate officer not later than the close of business on the due date. Reports may be filed by fax and are timely if received by the appropriate officer not later than the close of business on the due date only if an original of the report is received by the appropriate officer within seven days of the due date.

(b) A person upon whom a penalty has been imposed for failure to file a statement or other information required to be filed pursuant to section 5, 6, or 7 of article XXVIII of the state constitution or section 1-45-108, this section, or section 1-45-110 by the due date may appeal the penalty by filing a written appeal with the appropriate officer no later than thirty days after the date on which notification of the imposition of the penalty was mailed to the person's last-known address. Upon receipt of an appeal pursuant to this paragraph (b), the appropriate officer shall set aside or reduce the penalty upon a showing of good cause.

(3) In addition to any other reporting requirements of this article, every incumbent in public office and every candidate elected to public office is subject to the reporting requirements of section 24-6-203 C.R.S.

(4) (a) All reports required to be filed by this article are public records and shall be open to inspection by the public during regular business hours. A copy of the report shall be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection.

(b) Any report that is deemed to be incomplete by the appropriate officer shall be accepted on a conditional basis and the committee or party treasurer shall be notified by mail as to any deficiencies found. If an electronic mail address is on file with the secretary of state, the secretary of state may also provide such notification by electronic mail. The committee or party treasurer shall have seven business days from the date of mailing such notice to file an addendum that cures the deficiencies.

(5) (a) The secretary of state shall operate and maintain a website so as to allow any person who wishes to review reports filed with the secretary of state's office or with a county clerk and recorder pursuant to this article electronic read-only access to such reports free of charge.

(b) All reports required to be filed by this article that are electronically filed pursuant to subsection (6) of this section shall be made available immediately on the website.

(c) The website shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee.

(d) At the earliest practicable date, the secretary of state shall develop and implement improvements to the website's design and structure to improve the public's ability to navigate, search, browse, download, and analyze information. Such improvements shall include but need not be limited to:

(I) Enhanced searching and summary reporting, including additional search fields such as zip code, employer, and vendor, the ability to search across multiple committees and all filers, the ability to filter or limit searches, such as by election cycle or candidate, the inclusion of smart-search features such as "name sounds like" or "name contains", and numerical totaling of amounts shown on search results;

(II) Features that facilitate the ability to download raw data and search results in one or more common formats to enable offline sorting and analyzing;

(III) Detailed, technical instructions for users;

(IV) Information to help users determine the scope of candidates' and committees' reports and campaign data available online, including explanations of which types of reports are available, the period covered by the online data, and which specific reports can be viewed for each campaign committee; and

(V) Resources that give the public comparative context when viewing campaign finance data, such as compilations of the total amounts of money raised and spent by individual candidates, lists of total amounts raised and spent by all statewide and legislative candidates, and compilations of fundraising and spending across candidates and election cycles.

(e) The secretary of state may promulgate rules necessary for the implementation of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) (a) The secretary of state shall establish, operate, and maintain a system that enables electronic filing using the internet of the reports required by this article to be filed with the secretary of state's office or with a county clerk and recorder. The rules for use of the electronic filing system shall be promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(b) In addition to any other method of filing, any person required to file with the secretary of state's office or with a county clerk and recorder may use the electronic filing system described in paragraph (a) of this subsection (6) in order to meet the filing requirements of this article. Where a person uses such electronic filing system to meet the filing requirements of this article, the secretary of state shall acknowledge by electronic means the receipt of such filing.

(7) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(8) (a) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(b) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) Each county clerk and recorder shall use the electronic filing system described in subsection (6) of this section to transmit any report filed with the county clerk and recorder to the secretary of state.

(III) A county clerk and recorder shall transmit any report to be transmitted to the secretary of state pursuant to subparagraph (II) of this paragraph (b) as quickly as practicable. The county clerk and recorder shall convert any report that is not electronically filed into electronic format before transmitting the report to the secretary of state.

(c) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) Any person required to file reports with a county clerk and recorder pursuant to this article may meet the filing requirements by using the electronic filing system described in subsection (6) of this section.

(9) Subsections (1) and (8) of this section shall not be construed to require the secretary of state to review reports electronically filed by persons required to file reports with a county clerk and recorder pursuant to this article or to impose any enforcement duties upon the secretary of state beyond the duties specified in section 9 of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (4), (5), and (6) amended, p. 125, § 7, effective March 15. **L. 2001:** (1) amended and (7), (8), and (9) added, p. 808, § 2, effective August 8; (6)(b) amended, p. 1111, § 3, effective September 1. **L. 2002:** (1) and (4)(a) amended, p. 1640, § 34, effective June 7. **L. 2003:** (1) and (7)(b) amended, p. 2159, § 4, effective June 3. **L. 2005:** (9) amended, p. 760, § 7, effective June 1. **L. 2007:** (5), (6), (7), (8), and (9) amended, p. 1296, § 1, effective July 1; (2) amended, p. 1983, § 37, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-104 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Subsection (2) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Administrative law judge (ALJ) correctly dismissed appellants' agency appeal under § 10 (2)(b)(I) of article XXVIII of the state constitution for lack of subject matter jurisdiction. No question that appellants were required to file reports with secretary of state under subsection (1) of this section once appellant-candidate became a candidate for the general assembly. This does not mean, however, appellants acquired right to appeal penalty to secretary of state. Report at issue was filed not in connection with appellant-candidate's candidacy for the general assembly but solely in connection with position as a county commissioner. Thus, ALJ correctly determined

that, for purposes of report and penalty at issue, appellants were persons required to file appeal with county clerk and recorder, not with secretary of state. *Sullivan v. Bucknam*, 140 P.3d 330 (Colo. App. 2006).

Although appellants could have been required to file a report with the secretary of state in certain circumstances, those circumstances were not present in instant case. Appellants do not qualify as persons required to file with secretary of state under § 10 (2)(b)(I) of article XXVIII of the state constitution for purposes of underlying action merely because they could have been required to so file in other circumstances. *Sullivan v. Bucknam*, 140 P.3d 330 (Colo. App. 2006).

1-45-110. Candidate affidavit - disclosure statement. (1) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article; except that an individual who is a candidate in a special legislative election that filed a candidate affidavit for the preceding general

election shall not be required to comply with the provisions of this section, and except that a candidate in a special district election shall file the candidate affidavit or, alternatively, a copy of the candidate's self-nomination and acceptance form or letter submitted in accordance with section 32-1-804.3, C.R.S., if such form or letter contains a statement that the candidate is familiar with the provisions of this article, no later than the date established for certification of the special district's ballot pursuant to section 1-5-203 (3) (a). A candidate in a municipal election may comply with this section by filing a candidate affidavit pursuant to section 31-10-302 (6), C.R.S., if such affidavit contains a statement that the candidate is familiar with the provisions of this article.

(2) (a) Except as provided in paragraph (b) of this subsection, each candidate for the general assembly, governor, lieutenant governor, attorney general, state treasurer, secretary of state, state board of education, regent of the University of Colorado, and district attorney shall file a statement disclosing the information required by section 24-6-202 (2) with the appropriate officer, on a form approved by the secretary of state, within ten days of filing the affidavit required by subsection (1) of this section.

(b) No candidate listed in paragraph (a) of this subsection shall be required to file another disclosure statement if the candidate had already filed such a statement less than ninety days prior to filing the affidavit required by subsection (1) of this section.

(3) Failure of any person to file the affidavit or disclosure statement required under this section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the appropriate officer has sent a notice to the person by certified mail, return receipt requested, addressed to the person's residence address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of receipt of the notice.

(4) Any disclosure statement required by subsection (2) of this section shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(5) If a person is defeated as a candidate or withdraws from the candidacy, that person shall not be required to comply with the provisions of this section after the withdrawal or defeat.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 99:** (1) amended, p. 1392, § 16, effective June 4. **L. 2002:** (1) amended, p. 1641, § 35, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-105 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (1)(a.5) added and (1)(b) and (2) amended, p. 126, § 8, effective March 15; (2)(d) added, p. 1725, § 3, effective June 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-113 and 1-45-114 as said sections existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3597.

1-45-111.5. Duties of the secretary of state - enforcement. (1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. L. 2005: (2) amended, p. 852, § 4, effective June 1.

ANNOTATION

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule defining "member" for purposes of constitutional provisions governing small donor committees. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's authority to enact proposed rule. Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of article XXVIII. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal

of achieving transparency of political contributions. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Plaintiffs demonstrated reasonable probability of success on the merits in alleging that administrative rule promulgated by secretary of state violated their constitutional rights to freedom of association as applied to them. Secretary's immediate enforcement of administrative rule forcing labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns would have effectively prevented plaintiffs from exercising their first amendment rights in general election. Administrative rule was not narrowly tailored. Rationale justifying administrative rule was based upon speculation there would be dissenters, thereby impermissibly penalizing constitutional rights of the many for the speculative rights of the few. Accordingly, district court did not abuse its discretion by entering preliminary injunction against implementation of administrative rule. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006)

1-45-112. Duties of municipal clerk and county clerk and recorder. (1) The municipal clerk and county clerk and recorder shall:

(a) Develop a filing and indexing system for their offices consistent with the purposes of this article;

(b) Keep a copy of any report or statement required to be filed by this article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one year after the candidate leaves office;

(c) Make reports and statements filed under this article available to the public for inspection and copying no later than the end of the next business day after the date of filing. No information copied from such reports and statements shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(d) Upon request by the secretary of state, transmit records and statements filed under this article to the secretary of state;

(e) Notify any person under their jurisdiction who has failed to fully comply with the provisions of this article and notify any person if a complaint has been filed with the secretary of state alleging a violation of this article;

(f) Report apparent violations of law to appropriate law enforcement authorities.

(2) The secretary of state shall reimburse the municipal clerk and the county clerk and recorder of each county at the rate of two dollars per candidate per election to help defray the cost of implementing this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-115 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-112.5. Immunity from liability for fine or penalty. (1) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be immune from any liability for a fine or penalty imposed pursuant to section 10 (1) of article XXVIII of the state constitution in any proceeding that is based on an act or omission of such volunteer if:

(a) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and

(b) The violation was not caused by willful and intentional misconduct by such volunteer.

(2) Subsection (1) of this section shall be administered in a manner that is consistent with section 1 of article XXVIII of the state constitution and with the legislative declaration set forth in section 1-45-102.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3.

1-45-113. Sanctions. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (6) added, p. 633, § 3, effective May 6; (6) added, p. 952, § 4, effective May 27. **L. 2000:** (1), (2), (3), and (4) amended, p. 127, § 9, effective March 15. **L. 2001:** (4) amended, p. 1110, § 1, effective September 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-121 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-114. Expenditures - political advertising - rates and charges. (1) No candidate shall pay to any radio or television station, newspaper, periodical, or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials, or services. Any such rate shall not be rebated, directly or indirectly.

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate as a contribution to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

(3) Nothing in this article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs, and agency fees if such adjustments are offered consistently to other advertisers.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** Entire section amended, p. 128, § 10, effective March 15. **L. 2003:** (2) amended, p. 2160, § 5, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-118 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-115. Encouraging withdrawal from campaign prohibited. No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-119 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-116. Home rule counties and municipalities. Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112 (2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2003:** Entire section amended, p. 2161, § 7, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-120(1) as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-117. State and political subdivisions - limitations on contributions. (1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has

policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the sanctions authorized in section 1-45-113 or any appropriate order or relief, including injunctive relief or a restraining order to enjoin the continuance of the violation.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2002:** (4) added, p. 280, § 1, effective August 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-116 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this

section.

The purpose of this section is to prohibit the state government and its officials from spending public funds to influence the outcome of campaigns for political office or ballot issues. *Colo. Common Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), *aff'd*, 102 P.3d 999 (Colo. 2004).

This section must be strictly construed. It is an established principle that statutes regarding the use of public funds to influence the outcome of elections are strictly construed. *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004).

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

Although moneys collected by the political subdivision were not derived from state-imposed sales, use, property, or income taxes, those moneys may be spent by the political subdivision only for authorized public purposes. The general assembly has in essence declared that the expenditure of moneys in the fund for purposes prohibited by this section are not authorized expenditures for public purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section prohibits the use of "public moneys from any source," not the use of "public funds". The general assembly thus selected a phrase not previously construed in seeking to limit the expenditure of funds by various governmental entities for certain purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section tends to promote public confidence in government by prohibiting the use of moneys authorized for expenditure by political subdivisions for specified public purposes to advance the personal viewpoint of one group over another. A political subdivision's use of moneys that were authorized for expenditure for the benefit of an insured to oppose the passage of an amendment proposed by an insured is the type of conduct the general assembly intended to prohibit

by the enactment of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

What is of "official concern" to school district board of education is to be determined by reference to the official powers and duties delegated by the general assembly in the school laws. *Mountain States Legal Found. v. Denver Sch. Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

A matter of official concern is one which at the very least involves questions which come before the officials for an official decision. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

Proposed constitutional amendment not of official concern. A proposed amendment to the state constitution on a general election ballot is not a matter of official concern. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

Not determined solely by board. The characterization of a campaign issue as being of "official concern" is not a judgment which can be made solely by the board of education; such an interpretation of this section would give unlimited discretion to the school board to use school funds and school facilities whenever it suited the personal preference of the majority of the members. *Mountain States Legal Found. v. Denver Sch. Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

This section allows an employee with policy-making responsibility to expend public funds up to the \$50 limit in expressing an opinion about a pending ballot issue. *Regents of the Univ. of Colo. v. Meyer*, 899 P.2d 316 (Colo. App. 1995).

Paid staff time is a contribution in kind for purposes of this section. Time spent by the state treasurer's staff during work hours on a non-volunteer basis preparing and disseminating press releases expressing the state treasurer's opposition to a statewide ballot issue therefore violated this section to the extent that the value of that time exceeded \$50. *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004).

State treasurer's press conference and press releases opposing a statewide ballot issue violated this section. The press releases were not balanced factual summaries of the ballot issue and were not resolutions because they were not formal expressions of a voting body. The state treasurer expended more than \$50 in preparing the press releases and was not permitted to expend more than that to take a position of advocacy. *Colo. Common Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), *aff'd*, 102 P.3d 999 (Colo. 2004).

Public school payroll deduction system for teachers' union dues, a portion of which was given by the union to a political action committee, did not constitute a "contribution in kind" because it did not support a specific "issue" or "candidate" that the political action committee supported or opposed during the time that

the district made the payroll deductions. *Mountain States v. Secretary of State*, 946 P.2d 586 (Colo. App. 1997) (decided under law in effect prior to 1997 amendment).

Brochure mailed by metropolitan districts explaining proposed improvements violated this section. The brochure, when read in its entirety, did not present arguments for and against the issue. In fact, it took a position exclusively in favor of the issue, presented no contrary arguments, and expressly advocated the passage of the bond initiative that was titled only days after the

mailing of the brochure. Thus, it urged voters to vote for the initiative. *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

Although brochure did not mention ballot initiative by name, administrative law judge appropriately concluded that the language of this section does not require that level of specificity. The section prohibits "the urging of electors to vote a certain way." *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

1-45-118. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

ELECTION RULES OF THE COLORADO SECRETARY OF STATE

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COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Rule 1. Definitions

- 1.1 As used in these Rules and the "Uniform Election Code of 1992" unless the context otherwise requires, the following terms shall have the meanings indicated:

"District office of state concern" means any of the following offices: Member of the State Board of Education, Member of the Board of Regents of the University of Colorado, and Member of the Board of Directors of the Regional Transportation District.

Rule 2. Rules Concerning Voter Registration

- 2.1 All requests for lists, printouts, disks, tapes, and other media shall be made in writing.
- 2.2 After a receipt of request, the fee for providing the information shall be determined. The fee must be paid prior to the request being filled.
- 2.3 Emergency Registration Application. Prior to the implementation of the statewide voter registration database, when an elector completes an emergency registration application pursuant to section 1-2-217.5 (1)(b), C.R.S., the elector shall be required to present one of the forms of identification set forth in Rule 30.1.6.
- 2.4 Confidentiality of Agency in Voter Registration. For Voter Registration Applications completed pursuant to Part 5 of Article 2 of Title 1, C.R.S., at an agency designated by the National Voter Registration Act of 1993, no information regarding the name and location of the designated voter registration agency shall be provided to the public, and such information shall remain confidential.
- 2.5 Confidentiality of Voter Information. Pursuant to section 24-72-204(3.5)(b)(II) and (IV), C.R.S., the county clerk and recorder of the county where the individual resides shall provide an opportunity to make the request of confidentiality in person at the time such individual registers to vote or make any change in the individual's registration, and at any other time during the normal business hours of the office of the county clerk and recorder.
- 2.5.1 The voter's name, address, and birth date shall be listed on the confidentiality application. A confidentiality affirmation shall be printed on the form, in the area immediately above a line for the applicant's signature and the date. The affirmation shall state the following:
- "I swear or affirm, under penalty of perjury, that I have reason to believe that I or a member of my household will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential"*
- 2.5.2 Immediately below the signature line, there shall be a printed notice, in a type that is larger than the other information contained on the form, that the applicant may be prosecuted for perjury in the second degree under section 18-8-503, C.R.S., if the applicant signs such affirmation and does not believe such affirmation to be true.

- 2.5.3 A voter making an address change within the same county shall not be charged an additional processing fee.
- 2.6 Information required from applicants for voter registration.
- 2.6.1 All applicants for voter registration shall provide on the application for voter registration:
- (1) in the case of an applicant who has been issued a current and valid Colorado driver's license or valid Identification card issued by the department of revenue, the applicant's driver's license number or Identification card number; or
 - (2) in the case of an applicant who has not been issued a current and valid Colorado driver's license or valid Identification card issued by the department of revenue, the last four digits of the applicant's social security number or the entire social security number.
- 2.6.2 If an applicant has not been issued a current valid Colorado driver's license number, a valid Identification card issued by the department of revenue, or a social security number as required by Rule 2.6.1, the applicant shall be assigned a unique identifying number for voter registration purposes.
- 2.7 First Time Voter Who Registers by Mail. Prior to the implementation of the statewide voter registration database, when a first time voter registers to vote by mail, the voter shall provide a copy of one of the forms of identification set forth in Rule 30.1.6.
- 2.8 Submission of voter registration forms. A properly executed voter registration form may be submitted to the county clerk and recorder in person, by mail, by fax, or as a PDF attachment to an email.
- 2.8.1 All voter registrations submitted by mail, fax, or as a PDF attachment to an email shall be treated as mail registrations. [Section 1-2-501, C.R.S., Election Rule 30.3]
- 2.8.2 If any portion of a voter registration submitted by "mail" is illegible, the county clerk and recorder shall notify the applicant of the additional information required in accordance with section 1-2-509, C.R.S.
- 2.9 Registration of Homeless Voters.
- 2.9.1 For the purpose of voter registration residence a homeless voter may identify a specific location within a precinct that the voter considers his home base to which the voter returns regularly and manifests an intent to remain, and a place from which he or she can receive messages and be contacted. A home base may include a homeless shelter, a homeless provider, a park, a campground, a vacant lot, a business address, or any other physical location.
- 2.9.2 If the home base does not include a mailing address, then the homeless voter must provide a mailing address pursuant to section 1-2-204(2)(f), C.R.S.
- 2.9.3 A post office box or general delivery at a post office shall not be deemed a home base.
- 2.10 Changes to an Elector's Voter Registration Record. If an elector submits a change to his or her voter registration record that does not contain all of the information required by sections 1-2-216 or 1-2-219, C.R.S., the county clerk and recorder may not make the requested change, unless the county clerk and recorder can confidently identify the voter, otherwise the county clerk and recorder shall notify the voter what additional information is required to process the request.

Rule 3. Rules Concerning Qualified Political Organizations

- 3.0 Qualified Political Organization as identified by order of the 10th Circuit Court of Appeals (Baer v. Meyer, 728 F2d 471, 10th Cir. 1984).
- 3.1 A qualified political organization is one which has placed a candidate for a congressional district or state office on the ballot at a congressional vacancy or general election and whose officers have filed the required proof of organization with the Secretary of State and continues to meet the requirements of 3.3 and 3.4.
- 3.2 The required proof of organization, which may be filed at any time after organization, shall include, but shall not be limited to:
- a. By-laws of the Colorado political organization which shall include the method for selecting officers, selecting delegates to county, state, and national conventions, and selecting candidates planning to petition onto the state's general election ballot using the name of the Colorado political organization;
 - b. The names, addresses, and telephone numbers of the elected Colorado chairperson, vice chairperson, and secretary, together with the names, addresses, and telephone numbers of all other members elected or appointed to other offices or committees authorized by the by-laws.
- 3.3 Qualified political organizations shall meet once a year.
- 3.3.1 The meeting in the odd-numbered year shall be held for the purpose of electing a chairperson, vice-chairperson, secretary and other officers or committees as shall be provided for in the by-laws on file with the Secretary of State.
- (a) For new political organizations, this meeting must take place prior to placing a candidate on the ballot. Therefore, this meeting may occur in an even-numbered year.
- 3.3.2 The chairperson and the secretary shall file a full and complete list, under oath, of the persons elected or appointed pursuant to Rule 3.2, together with any amendments to the by-laws adopted at the meeting.
- 3.3.3 The meeting in the even-numbered year shall be held for the purpose of selecting candidates who wish to use the name of the political organization on petitions for the next general election.
- (a) A political organization which has not yet been qualified may select its candidate at the same meeting where the officers of the organization are named.
- 3.4 A qualified political organization shall place a candidate or candidates on the general election ballot every two years.
- 3.4.1 Candidates wishing to represent a qualified political organization on the general election ballot shall be placed in nomination by nominating petition pursuant to section 1-4-802, C.R.S.
- 3.4.2 Each petition shall contain the name of one candidate and shall have attached an affidavit signed under oath by the chairperson and secretary of the qualified political

organization. The affidavit form shall be approved by the Secretary of State and will include the date of the meetings required in Rule 3.3.

- 3.4.3 For a candidate to qualify for the ballot, the candidate must have been affiliated with the qualified political organization for one year, or if the political organization has not previously been qualified, the candidate must have been registered as unaffiliated for one year.
- 3.4.4 Having the name of a candidate from the qualified political organization appear on the ballot by the use of the write-in candidacy process shall not be considered as, nor meeting the requirements of, placing a qualified candidate on the general election ballot.
- 3.5 A political organization shall be qualified as soon as it:
 - (a) Files proof of organization with the Secretary of State;
 - (b) Meets to name a candidate to the general election ballot; and
 - (c) Certifies a candidate to the general election ballot.
- 3.6 Once a political organization becomes a qualified political organization, eligible electors shall be able to register as affiliated with the political organization.
 - 3.6.1 When an individual appears at any office or location for the purpose of voter registration, the questions asked and the information recorded shall be amended to reflect "political organization" affiliation.
 - 3.6.2 The opportunity to declare or change a political affiliation shall be provided exactly as the law provides for political parties in sections 1-2-204(2)(j) and 1-2-219, C.R.S.
 - 3.6.3 At any time a declaration or change in affiliation is requested, the same procedure shall be used for declaring a political party or political organization affiliation.
 - 3.6.4 In recording the information on the voter registration page, or affidavit, the affiliation with a political organization shall be listed by the name entry of the organization.
 - 3.6.5 In converting information on the voter registration page to lists, submissions for data entry, the Secretary of State's master voter registration list, etc., standard abbreviations shall be used and will be furnished to the county clerk and recorders by the Secretary of State.
- 3.7 Political organizations shall lose their status as qualified political organizations by failing to do any one of the following:
 - (a) Meet in odd-numbered years and file their list of officers with the Secretary of State, unless excused under Rule 3.3.1(a);
 - (b) Meet in even-numbered years and select a candidate or candidates who wish to appear on the ballot at the next general election;
 - (c) Place a candidate on a general election ballot through a nominating petition, meeting the requirements of Rule 3.4.
- 3.8 The Secretary of State will notify the county clerk and recorders by June 1 of each odd-numbered year of the loss of qualified status of a political organization. Upon receiving notification, the

county clerk and recorders shall mark on every affected voter registration record “unaffiliated.”

- 3.9 Print-outs, lists, tapes, etc. of voter registration records shall be furnished to qualified political organizations at the same rate or cost as charged to political parties. The only exception to this provision shall be the list furnished to the major political parties prior to the statutory precinct caucus day.
- 3.10 On all summary reports of voter registration by political party, the report shall list those registered with major political parties, minor political parties, qualified political organizations, or as unaffiliated.
- 3.11 Electors, whose voter registration record shows affiliation with a qualified political organization and who appear to vote at a primary election, shall complete a Declaration of Party Affiliation, thus losing affiliation with the qualified political organization.

Rule 4. Rules Concerning Circulation of Candidate Petitions

- 4.1 No petition for candidacy for any non-partisan office shall be circulated prior to 90 days before the election, except as provided in section 1-4-805, C.R.S.

Rule 5. Rules Concerning Non-Partisan Elections Not Coordinated by the County Clerk

- 5.1 For elections conducted on days other than described in section 1-7-116 (1), C.R.S., nothing shall preclude the designated election official from mailing the notice required by Article X, Section 20 of the Colorado Constitution to persons who are not eligible electors, if such mailing is done at the “least cost” possible.
- 5.2 If there are no appropriate polling place locations within the political subdivision conducting the election, a polling place may be designated outside of the political subdivision in a location that is convenient for the eligible electors of such political subdivision.
- 5.3 For elections not conducted in November and not coordinated with the county clerk and recorder, the ballot issue or question shall be identified by the name of the jurisdiction submitting the ballot issue or ballot question followed by a number in the case of initiatives or by a letter in the case of referred measures.
- 5.4 Elections authorized under Part 1, Article 45 of Title 37, C.R.S. (Water Conservancy Act), shall be conducted in accordance with Articles 1 through 13 of Title 1, C.R.S., where applicable, unless otherwise ordered by the district court having jurisdiction over the water conservancy district, pursuant to section 37-45-103 (3), C.R.S. (“Court”).
 - 5.4.1 The form and verification of any petition requesting an election conducted by a water conservancy district pursuant to section 37-45-114 (2), C.R.S. (“Petition”), shall conform with the requirements of sections 1-40-113 and 1-40-116, C.R.S., and the sections cited therein, and Rule 22 of these rules; except that no prior approval of the form of such election petition needs to be provided by the Secretary of State, the petition shall be filed with the Court and the verification process shall be directed by the water conservancy district named in the petition rather than the Secretary of State, and the “warning” language appearing on the petition shall be applicable to the election requested to be conducted.

- 5.4.2 The procedures for issuing the statement of sufficiency or insufficiency of the petition shall conform to the requirements of section 1-40-117, C.R.S., and Rule 22.4 of these rules; except that such statement shall be issued by the water conservancy district named in the petition, unless otherwise ordered by the Court.
 - 5.4.3 The procedures for cure of a petition deemed insufficient shall conform to the requirements of section 1-40-117, C.R.S., and Rule 19 of these rules; except any addendum to the petition shall be filed with both the Court and the water conservancy district named in the petition, unless otherwise ordered by the Court.
 - 5.4.4 The procedures for protesting the determination that a petition is insufficient shall conform to the requirements of section 1-40-118, C.R.S., and Rule 20 hereof, unless otherwise ordered by the Court.
 - 5.4.5 Upon final determination of the sufficiency of a petition, the court shall order, regardless of the actual expiration date of the term of the office subject to the court-ordered election, the holding of the election to be conducted no more than 100 days nor less than 60 days from the date of such Court order, unless the water conservancy district has notified the Court that such election is to be conducted as a coordinated election pursuant to section 1-7-116, C.R.S.
 - 5.4.6 The form and procedures for filing candidate nomination forms and call for nominations of persons desiring to be a candidate for the office to be voted upon at the Court-ordered election described in Rule 5.4.5 of these rules, shall be in conformance with the form and procedures required for special districts under Article 1, Title 32, C.R.S., unless otherwise ordered by the Court.
- 5.5 Non-Partisan Elections: Polling Place Procedures.
- 5.5.1 For polling place elections being conducted in accordance with Article 1, Title 32, C.R.S., upon execution of the self-affirming oath or affirmation pursuant to section 32-1-806(2), C.R.S., the eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), C.R.S., to one of the election judges. See section 1-7-110(1), C.R.S.
 - 5.5.2 If the eligible elector has executed the self-affirming oath or affirmation and provided his or her identification, such eligible elector may be allowed to vote, if such vote is not challenged. See sections 1-7-110(2) and 32-1-806(4), C.R.S.
 - 5.5.3 The election supplies provided to the supply judge of each polling place shall include an adequate number of provisional ballot envelopes that include the affidavit set forth in Rule 26.8.
 - 5.5.4 The signature and date on the provisional ballot affidavit envelope shall remain on the outside of the envelope.
 - 5.5.6 The provisional ballot affidavit envelope shall be numbered to correspond to the number of the provisional elector's name in the poll book, and the word "provisional" shall be marked on the ballot.
 - 5.5.7 Verification of Information in Provisional Ballot Affidavit. The designated election official shall verify the information contained in the provisional ballot affidavit pursuant to Rule 26. If the information contained in the affidavit provides adequate criteria such that the designated election official, using the Rule 26 search, can ascertain the registration of the elector, the provisional ballot shall count. If the information cannot be verified, the

ballot shall be rejected. See sections 1-8.5-105 and 1-8.5-106, C.R.S., and Rule 26.

- 5.5.8 The verification and counting of all provisional ballots shall be completed prior to the certification of the official abstract of votes cast in the election by the canvass board, pursuant to Section 1-10-203(1), C.R.S.
- 5.5.9 Canvassing Board's Count of Provisional Ballots. If, after the expiration of twelve days following an election, the election judges cannot complete the count of the provisional ballots cast, the canvassing board appointed pursuant to Section 1-10-201(1.5), C.R.S., shall complete the count of such provisional ballots.
- 5.5.10 If 25 or more provisional ballots have been cast and counted, the results shall be reported as one total. If less than 25 provisional ballots have been cast and counted, the results shall be included in the results of the mail-in ballots counted in the election.
- 5.5.11 The provisional ballot shall not be counted if the elector failed to complete the affidavit on the envelope or the elector was not registered by the deadline in the State of Colorado.
- 5.5.12 A copy of the provisional ballot affidavit shall be provided to the county clerk and recorder of the county of the elector's residence, and shall constitute a voter registration for future elections. See section 1-8.5-108, C.R.S.

Rule 6. Rules Concerning Coordinated Elections

- 6.1 Participation in coordinated elections.
 - 6.1.1 For elections where the electors do not need to be registered electors, political subdivisions may conduct their own elections and must coordinate with the coordinated election official any ballot issue notice required by Article X, Section 20 of the Colorado Constitution.
 - 6.1.2 The affected political subdivision shall enter into intergovernmental agreements which delineate which tasks shall be the responsibility of the designated election official of the political subdivision and which shall be the responsibility of the coordinated election official.
- 6.2 Procedures for Coordinated Elections Involving Jurisdictions Shared by Multiple Counties
 - 6.2.1 Upon implementation of the statewide voter registration database, controlling counties shall be designated for the purpose of assigning and setting up shared races, issues, and questions in coordinated elections.
 - 6.2.2 The controlling county shall be the county where the largest number of active registered electors within the jurisdiction reside at the time that the controlling county is designated. Once designated, the controlling county will not change regardless of any increase or decrease in the number of active registered electors.
 - 6.2.3 The Secretary of State shall maintain and make available to county clerks on its website the list of controlling counties for each shared jurisdiction within the state.
 - 6.2.4 The controlling county shall set up all certified races, issues, and questions in the statewide voter registration database, and make the information available to all

counties sharing jurisdiction no later than the date of ballot certification.

- a. The controlling county shall use only standard abbreviations approved by the Secretary of State in setting up the races, issues and questions for the shared jurisdiction.
- b. After the controlling county has set up the shared races, issues and questions, no changes shall be made to the ballot order or to the numbers assigned without the approval of the Secretary of State.
- c. All counties within the shared jurisdiction shall ensure that the races, issues and questions are printed on the ballot as certified by the Secretary of State or designated election official.

6.2.5 If any controlling county fails to fulfill its responsibilities in accordance with this Rule, any of the other counties in the shared jurisdiction may make a written request to the Secretary of State to temporarily assume the duties of the controlling county. The Secretary of State shall have the authority to act on behalf of the controlling county or to temporarily designate another county to act as the controlling county in order to assure implementation of this Rule.

6.3 Form of election for November coordinated elections.

6.3.1 The county clerk and recorder is the election official for coordinated elections which are held in November of each year.

(a) The county clerk and recorder shall be responsible for mailing the Article X, Section 20 Ballot Issue notice.

(b) The county clerk and recorder shall not be required to conduct more than one form of election unless he or she so chooses.

6.3.2 School districts that have the opportunity to participate in a coordinated election may not elect to hold separate mail ballot elections but must participate in the form of election chosen by the county clerk and recorder.

6.4 Form of coordinated elections held other than in November.

6.4.1 For all other elections where political subdivisions hold an election on the same day, the electors or boundaries overlap and ballot issues as defined in Section 1-1-104 (2.3), C.R.S., appear on the ballot of overlapping jurisdictions, the governing bodies or the designated election officials of such overlapping jurisdictions must name a coordinated election official who is responsible for assuring that the Article X, Section 20 notice is given.

6.4.2 The political subdivisions may contract with the appropriate county clerk and recorder to be the coordinated election official.

6.5 Determination of ballot issues and texts.

6.5.1 Each political subdivision shall prepare the list of candidates and the ballot title and text for ballot issues and ballot questions, as required by law.

(a) The coordinated election official shall assure that the ballot title is on each ballot as required by law.

- (b) Political subdivisions may only require the coordinated election official to print the entire text of a ballot issue or ballot question on the ballot if they pay for any additional cost associated with printing and if sufficient space is on the voting equipment to print the entire text given the other issues, questions, and candidates on the ballot. The coordinated election official shall tell the political subdivision how much space is available for text for each position on the ballot. If the required ballot title and text is too long for the voting equipment, the coordinated election official may choose to conduct the election with a different form of ballot.
- (c) For counties where ballot election material must be printed in languages other than English, the political subdivisions are responsible for assuring proper translation of all election materials related to that political subdivision and must pay their pro-rata share of increased printing costs unless otherwise provided by the intergovernmental agreement.
- (d) For counties where election material is not required to be printed in languages other than English, the political subdivisions are not required to provide translation of all election materials nor pay a pro-rata share of the printing costs unless they so agree.

6.5.2 Each political subdivision shall determine the order of the ballot issues for their political subdivision in accordance with the requirements of Colorado Constitution Article X, Section 20 and Title 1.

- (a) Initiatives shall be designated by a number; referred measures shall be designated by a letter or by a number and a letter.
- (b) For each grouping of ballot issues and ballot questions by a political subdivision, all initiatives shall precede all referred measures.
- (c) For each grouping of ballot issues and ballot questions, the order shall be as follows:
 - 1. Initiatives to increase taxes;
 - 2. Initiatives to retain excess revenues;
 - 3. Initiatives to increase debt;
 - 4. Other citizen petitions;
 - 5. Referred measures to increase taxes;
 - 6. Referred measures to retain excess revenues;
 - 7. Referred measures to increase debt;
 - 8. Other referred measures.
- (d) For statewide measures, initiatives shall be numbered in the order in which the statements of sufficiency are issued. The numbers one through five shall be reserved for initiatives to increase taxes; the numbers six through ten shall be reserved for initiatives to retain excess revenues; the numbers eleven through fifteen shall be reserved for initiatives to increase debt; all other citizen petitions shall be numbered consecutively beginning with sixteen.

(e) Ballot issues from the various political subdivisions shall be ordered on the ballot as provided in section 1-5-407 (5), C.R.S:

1. Each category of initiated ballot issues and questions shall be numbered in the following series:

01-99	State Issues
100-199	County Issues
200-299	Municipal Issues
300-399	School District Issues
400-499	Ballot Issues and Questions for other political subdivisions greater than a county.
500-599	Ballot Issues and Questions for other political subdivisions which are wholly within a county.

2. Each category of referred ballot issues and questions shall be designated by a letter or a number and a letter in the following series:

A-Z	State Issues
1A-1Z	County Issues
2A-2Z	Municipal Issues
3A-3Z	School District Issues
4A-4Z	Ballot Issues and Questions for other political subdivisions greater than a county.
5A-5Z	Ballot Issues and Questions for other political subdivisions which are wholly within a county.

3. Ballot questions and issues are numbered or lettered in the order in which the measures are certified to the ballot by the designated election official after the protest period has ended, or if a protest was filed after the protest has been completed.
4. For other than state issues, if a county has multiple cities and/or multiple discrete school districts and other political subdivisions, the designated election official may either further subdivide the series and assign each political subdivision a specific series of numbers, or when the ballot is certified the designated election official may assign the final numbers/letters, making sure that all measures for each political subdivision are grouped together.
5. For other than state issues and questions, if the same ballot issue or question will be on the ballot in more than one county, the county clerks shall confer with

one another and shall give the same ballot number or letter to the ballot issue or questions.

6. Each ballot question or issue shall contain the name of the political subdivision at the beginning of the ballot questions or issue. If the designated election official chooses, the name of the political subdivision may appear before the grouping of questions, such as State Ballot Questions, Arapahoe County Ballot Questions, City of Aurora Ballot Questions, etc.

6.5.3 General Provisions

- (a) The coordinated or designated election official may include the following statement with the ballot issue notice: "This notice is mailed to each address with one or more active, registered electors. You may not be eligible to vote on all issues presented in this notice."
- (b) The coordinated or designated election official may include the following statement on the ballot issue notice: "The following is a summary of comments filed in favor of, or opposed to, the ballot issue."

6.6 Colorado Constitution Article X, Section 20 notice requirements.

6.6.1 The state and local governments, excluding enterprises, have sole responsibility for drafting and distribution of the notice required by Article X, Section 20. Any or all of the responsibilities may be delegated to the coordinated election official in the intergovernmental agreement.

6.6.2 The notice shall be mailed to "All Registered Voters" at the mailing addresses of active registered electors in the county, as indicated on the voting record.

- (a) Nothing shall preclude the coordinated or designated election official from sending notice of various elections to persons who are not eligible electors if the notice sent is part of the coordinated notice and if the sending arises from the official's efforts to mail the notice at "least cost".
- (b) Nothing shall preclude the coordinated or designated election official from sending notice to each household in the county or political subdivision whether or not registered electors reside at that household as long as notice is sent which assures that all active registered electors are included on the mailing list.
- (c) Nothing shall preclude the coordinated or designated election official from sending notice to each registered elector in a particular political subdivision.

6.6.3 The coordinated election official must include information in the package sent with the notice that tells electors whether the election is a mail ballot election, a polling place election, a vote center election or a combination of election forms.

- (a) If the election is a polling place election or a vote center election, the notice of the location of the polling place or vote center may be included in the consolidated mailing.
- (b) If a separate mail ballot election is being held by a political subdivision in the county at the same time as a polling place election or a vote center election, the notice shall include that information. Section 1-5-205, C.R.S.

- 6.6.4 If state statute allows the ballot issue notice and the ballot to be mailed at the same time, the ballot for the mail ballot election may be included with the notice.
- 6.6.5 The political subdivisions must provide all completed Article X, Section 20 notices in camera ready format or as otherwise specified.
- 6.6.6 The coordinated election official shall not be responsible for failure to meet the Article X, Section 20 constraints if the notice and summaries are not submitted by the political subdivision within the deadline and in the form required by the coordinated election official.
 - (a) The summaries of comments for and against ballot issues shall not include language of a generally recognized profane, indecent, immoral, offensive, scandalous or libelous character. No names of persons or private groups shall be included in any summary.
 - (b) For purposes of counting words and to verify the five hundred constitutional limit for each "pro" and each "con" summary, a hyphenated word, unless it is divided by a continuation hyphen at the end of a line, counts as two or more words. A number counts as one word, regardless of dollar signs, commas or periods within the number.
- 6.7 Written comments concerning ballot issues submitted to the designated election official for the political subdivision shall not be withdrawn after the end of the business day on the last Friday immediately preceding the forty-fifth day before the election.

Rule 7. Rules Concerning Polling Places

- 7.1 Polling place materials shall include, where applicable, HAVA information, voting demonstration display, signature card table, registration records or lists, poll books, electronic or paper, or completed signature cards, paper ballots and voting booths or DRE, provisional voting area or procedure and ballot box if provided.
- 7.2 For coordinated elections, polling places do not have to be within the political subdivisions which are participating in the election.
- 7.3 Polling places for partisan elections must be established no less than ninety days prior to an election and may only be changed pursuant to section 1-5-108, C.R.S. in the event of an emergency.
- 7.4 In the event the polling place is to be in a temporary structure that is not present at the time, a polling place notice is to be posted pursuant to section 1-5-106, C.R.S., the future location of the polling place shall nonetheless be posted at the required time, and notice shall continuously remain posted until 48 hours after the polling place is closed.
- 7.5 Vote Center Guidelines
 - 7.5.1 In addition to the requirements of section 1-5-102.7, C.R.S., the following must be taken into consideration when determining the number and locations of vote centers:
 - a. Population Centers
 - b. Demographics

- c. Size of proposed locations
 - d. Available parking
 - e. Accessibility requirements as set forth in section 1-5-703, C.R.S.
- 7.5.2 The designated election official shall publish a notice of hearing on its website for no less than fifteen days prior to the public hearing. The notice shall include:
- a. The number and locations of vote centers proposed for use
 - b. The date, time and location of the hearing
- 7.5.2.1 If the designated election official does not regularly maintain a website, the notice shall be published in accordance with section 1-1-104(34), C.R.S., at least fifteen days prior to the public hearing.
- 7.5.2.2 A copy of the notice shall be posted in the office of the designated election official for the duration of the public comment period.
- 7.5.3 A public hearing shall be conducted by the designated election official no less than sixteen days after posting or publishing the notice of hearing.
- 7.5.3.1 The public hearing may be held in conjunction with a regular or special meeting of the governing board of the political subdivision. If requested by the designated election official, the governing board of the political subdivision may conduct the hearing.
- 7.5.4 Public comments received in writing prior to the hearing shall be entered into the record of the public hearing. Oral comments received at the hearing shall be entered into the record and may be limited to allow the proceedings to go forward with reasonable promptness and efficiency.
- 7.5.5 The designated election official may combine the notice and hearing for a primary election and general election in a calendar year.

Rule 8. Rules Concerning Watchers

8.1 Definitions:

- 8.1.1 "Official Observer" means either an observer appointed by the Secretary of State or an observer appointed by the federal government and approved by the Secretary of State. Official Observers may be present in all phases of the election process, but are subject to rules and regulations as prescribed by the Secretary of State and perform duties as may be assigned by the Secretary of State.
- 8.1.2 "Watcher" shall mean an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy or nonpartisan election or by a person designated by either the opponents/proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration

books of the county clerk and recorder. See section 1-1-104(51), C.R.S.

- 8.1.3 “Media Observer” shall mean an observer with valid and current media credentials from the media who shall adhere to the formal document “Guidelines for Members of the Media Who Observe Election Counts and Recounts” dated June 2004, as may be amended, which are incorporated herein by this reference for all proper purposes.
- 8.2 Qualification of Watchers. Watchers shall certify they are qualified pursuant to sections 1-1-104(51), 1-7-105, 1-7-106, 1-7-107, and 1-7-108(2), C.R.S. Watchers shall take an oath as provided in section 1-7-108(1) and shall, upon first entering the precinct place or location, surrender to the election official or election judges a certificate of appointment at each precinct polling place or location where the watcher has been designated to act.
 - 8.2.1 If a watcher leaves a precinct and the same watcher returns later in the day to the same precinct, another certificate of appointment is not necessary and shall not be required. The original certificate of appointment will suffice.
 - 8.2.2 If a watcher is replaced during the day, the watcher replacing the original watcher must have an original certificate of appointment for that precinct.
 - 8.2.3 Certificate of appointment as a watcher is not transferable to another individual.
- 8.3 Political party attorneys are not allowed in the polling place unless they are duly appointed as watchers.
- 8.4 Watchers are not allowed to have cell phones, cameras, recording devices, laptops or PDAs (Palm Pilot, Blackberry, etc.) in the polling place.
- 8.5 List of Eligible Electors. To assist Watchers in performing their tasks, the election official or election judge shall provide a list, log, check-in card or other similar information of voters who have appeared in the precinct polling place to vote. The information or documents shall not be removed from the polling place or voting location. Watchers may maintain a list of eligible electors who have voted by utilizing only that information provided by the election official or election judge, except that they may bring with them into the polling place or location a list of electors previously maintained by the Watcher. Section 1-7-108(3), C.R.S.
- 8.6 Watchers shall be subject to the provisions of section 1-5-503, C.R.S.
- 8.7 What Watchers May Observe. Duly appointed Watchers may observe polling place voting, early voting and the processing and counting of precinct, provisional, mail, and mail-in ballots. For mail ballot elections, or mail-in ballot processing, watchers may be present at each stage of the election including the receiving and bundling of the ballots received by the designated election official. Watchers may be present during provisional ballot processing but may not have access to confidential voter information.
- 8.8 Limitations of Watchers. Duly appointed Watchers may observe election judges but may not interrupt or disrupt the processing, verification and counting of any ballots or any other stage of the election. Watchers may track the names of electors who have cast ballots by utilizing their previously obtained lists, but may not write down any ballot numbers or any other identifying information about the electors. Watchers may not handle the poll books, official signature cards, ballots, mail ballot envelopes, mail-in ballot envelopes or provisional ballot envelopes, voting or counting machines or machine components. Watchers shall not interfere with the orderly process and conduct of any election, including ballot issuance, receiving of ballots, voting or counting of the ballots. Watchers may not be allowed to interact with election officials or election judges, except that each designated election official shall name at least one individual in each precinct

polling place or election location to whom Watchers may direct questions or from whom watchers may seek requested information.

- 8.9 Parties May Appoint Watchers. Major and minor political parties with candidates on the ballot may appoint one Watcher each to be present to observe polling place voting, early voting, and the processing and counting of regular, provisional, mail and mail-in ballots. See sections 1-7-105 and 1-7-106, C.R.S.
- 8.10 Official Observers Appointed by the Federal Government. Official Observers appointed by the federal government shall be approved by the Secretary of State and shall be subject to Colorado law and these rules as they apply to Watchers; however, they need not be eligible electors in the jurisdiction in which they act as Watchers. This Rule shall not apply to Official Observers appointed by the United States Department of Justice. Official Observers appointed by the Secretary of State shall be subject to the rules and regulations as prescribed by the Secretary of State. Official Observers shall obtain from the Secretary of State, or his or her designee, duly executed letters of authority. The Official Observers shall surrender such letter of authority to the designated election official in the jurisdiction in which they act as Watchers.
- 8.11 Watchers, Official Observers and Media Observers at a Recount. Watchers, Official Observers and Media Observers may be present at a recount. Watchers, Official Observers and Media Observers must be qualified and sworn for a recount in the same manner as provided in Rule 8.2 and are subject to all other provisions related to the recount process. Any political party, candidate involved in the recount or proponents or opponents of an issue or question involved in the recount may appoint one Watcher to be present at any time during the recount. The candidate who is subject to a recount may appoint him or her self, or a member of the candidate's family by blood or marriage, as a watcher at a recount. See sections 1-7-105 and 1-7-106, C.R.S.
- 8.12 Media Observers. Media Observers with valid and current media credentials may be present to witness early voting, election day voting and the processing and counting of provisional, mail and mail-in ballots. However, at the discretion of the county clerk and recorder, Media Observers may be required to appoint one member of the media as a pool reporter, and one member as a pool photographer to represent all media observers in accordance with the Guidelines established by the Colorado Press Association in conjunction with the Colorado County Clerks' Association and the Secretary of State as set forth herein:

Guidelines for Member of the Media Who Observe Election Counts and Recounts (to be distributed to members of the Colorado Press Association):

The Colorado State Association of County Clerks and Recorders, Colorado Broadcasters' Association and Colorado Press Association have collaborated to develop the following guidelines and protocols for use when members of the media observe the counting or recounting of ballots. You are strongly encouraged to follow these guidelines to allow meaningful media access while not disrupting the work of county clerks to count ballots or doing anything to compromise the integrity of the election process.

- 1. If practical, please contact the election official's office prior to coming to observe the counting of ballots. If the election official knows you are coming, it will be easier to accommodate your request for a place to observe the count or to interview an election official.*
- 2. At the discretion of the election official, a specific viewing area for members of the media and other observers may be available. To the extent practicable, the area will have been designated with sight lines to allow you to observe and take pictures or video of the counting process. If there are insufficient sight lines for*

you to take the photos or video you need, the election official may be able to make arrangements to accommodate your needs.

3. *Please observe counting procedures without disrupting the count. Please take pictures or video without the use of supplemental lighting. Do not talk to people participating in counting ballots. There may be workers who ask you not to include their images in your pictures or video. We encourage you to honor those requests if you can reasonably do so.*
4. *The Secretary of State's election rules state that if observers leave the area during a recount, they may not reenter without the consent of the election official. If you have occasion to leave the area, you may be denied re-admittance.*
5. *Please do not use the information you see when observing vote counts to report on partial election results. Please do not report anything that could be used to identify the person who casts a particular ballot.*

The Colorado State Association of County Clerks and Recorders, Colorado Broadcasters' Association and Colorado Press Association are all committed to working together to ensure the media has access to election counts and recounts, but that access is afforded in manners that do not disrupt the counts and do nothing to compromise the integrity of the process. Your cooperation in following these standards will help us to meet all these goals.

- 8.13 Watchers at Vote Centers. To assist Watchers in performing their tasks when a vote center election is held, the designated election official shall provide a list of all voters who have appeared in the vote centers to vote. This list shall be made available at the designated election official's main office. Such list may be made available to a requesting Watcher(s) in the form of data files, paper or reports, and furnished to all interested parties via email, paper reports, or faxed copies as may be available to the designated election official.

Rule 9. Rules Concerning Assistance to Disabled Voters

- 9.1 A sign providing substantially as follows shall be posted at the polling place/vote center:

**NOTICE
VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES**

Colorado law provides that a voter has a legal right to assistance in voting if assistance is needed because of blindness or other physical disability or inability to read or write. The following procedures apply:

1. *The voter must inform one of the election judges that he or she needs assistance.*
2. *The voter may be assisted by any election judge or by any eligible elector selected by the voter.*
3. *The person selected must complete a 'voter assistance/disabled voter self-affirmation form' if all of the following apply:*
 - *The person selected is not an election judge; and*
 - *The person selected is not the spouse, parent, grandparent, sibling or child*

eighteen years of age or older, of the voter requesting assistance; and

- *The person selected has assisted any other voter at the same election in the same precinct. Section 1-7-111(1)(b), C.R.S.*
 - *The self-affirmation form states, 'I,, certify that I am the individual chosen by the disabled elector to assist the disabled elector in casting a ballot.'*
4. *The person selected may provide any assistance needed by the voter, including entering the voting booth and preparing the ballot or operating the voting machine.*
 5. *The person providing assistance shall not seek to persuade or induce the voter to vote in a particular manner.*
 6. *The election judges shall record the name of each eligible elector assisted and the name of each person assisting by making an entry in the pollbook or list of eligible electors (or by making an entry on the signature card when preprinted signature cards are used in the place of a pollbook and list of eligible electors).*
- 9.2 When a voter has spoiled two ballots and requests a third ballot, an election judge shall offer assistance in voting procedures and casting the ballot.

Rule 10. Rules Concerning Ballots and Election Supplies

- 10.1 The text of all ballot issues that are subject to Article X, Section 20 shall be printed in all capital letters. The names of all candidates and all other ballot issues and questions shall be printed in upper and lower case.
- 10.2 If a ballot has been printed in error, the designated election official shall consult, as soon as the error is discovered, with the Secretary of State and follow the direction of the Secretary of State on the appropriate method of correction.
- 10.3 If there is no candidate on the ballot for any particular office, the ballot shall read, "No candidate for this office."
- 10.4 Candidates whose names are listed on a ballot must provide an audio recording of the pronunciation of their name to the Secretary of State prior to the election for offices that are voted on by the electors of the entire state, or of a congressional district, or for the offices of members of the general assembly or district attorney or a district office of state concern.
 - 10.4.1 For candidates designated by a major or minor party, such audio recording shall be provided no later than the last day upon which the candidate acceptance may be filed with the Secretary of State in accordance with Article 4 of title 1, C.R.S. The audio recording of the candidate's name shall be recorded exactly as it is provided on the candidate acceptance form that is submitted to the Secretary of State, and as they wish it to appear on the ballot.
 - 10.4.2 For candidates nominated by petition, such audio recording shall be provided no later than the last day upon which the petition of nomination and candidate acceptance may be filed with the Secretary of State in accordance with Article 4 of title 1, C.R.S. The audio recording of the candidate's name shall be recorded exactly as it is provided on the candidate acceptance form that is submitted to the Secretary of State, and as they wish it to appear on the ballot.

- 10.4.3 For unaffiliated candidates for president who seek placement on the General Election ballot by submitting a candidate's statement of intent and a filing fee to the Secretary of State in accordance with section 1-4-303(1), C.R.S., such audio recording shall be provided no later than the last day upon which the candidate's statement of intent may be filed with the Secretary of State in accordance with Article 4 of title 1, C.R.S. The audio recording of the candidate's name shall be recorded exactly as it is provided on the candidate's statement of intent that is submitted to the Secretary of State, and as they wish it to appear on the ballot.
- 10.4.4 For district and county judges seeking retention, such audio recording shall be provided no later than the date upon which the declaration of intent to run for retention in a judicial office may be filed with the Secretary of State in accordance with Article VI, Section 25 of the Colorado Constitution. The audio recording of the candidate's name shall be recorded exactly as it is provided on the declaration of intent to run for retention in a judicial office that is submitted to the Secretary of State, and as they wish it to appear on the ballot.
- 10.5 County, municipal, school district, and special district candidates whose names are listed on a ballot for an election coordinated by the county clerk and recorder must provide an audio recording of the pronunciation of their name to the county clerk and recorder prior to the election for offices that are voted on by the electors of the county, municipality, school district, or special district.
- 10.5.1 For candidates designated by a major or minor party, such audio recording shall be provided no later than the last day upon which the designated election official certifies the ballot content to the county clerk and recorder in accordance with section 1-5-203(3)(a), C.R.S. The audio recording of the candidate's name shall be recorded exactly as it is provided on the candidate's statement of intent that is submitted to the designated election official, and as they wish it to appear on the ballot.
- 10.5.2 For candidates nominated by petition, such audio recording shall be provided no later than the last day upon which the designated election official certifies the ballot content to the county clerk and recorder in accordance with section 1-5-203(3)(a), C.R.S. The audio recording of the candidate's name shall be recorded exactly as it is provided on the candidate's statement of intent that is submitted to the designated election official, and as they wish it to appear on the ballot.

Rule 11. Rules Concerning Voting Systems

11.1 Definitions

- 11.1.1 "Central Count" shall mean a ballot counting process whereby cumulative voting totals are tabulated for multiple precincts and multiple ballot styles at a single location.
- 11.1.2 "Election Setup Records" shall mean the electronic records generated by election tabulation software during election setup to create and define ballots, tabulation instruction, and other functions related to the election.
- 11.1.3 "Electronic Ballot" shall mean a ballot that is presented to the voter in a non-paper form such as on a touch screen or through audio feedback. After a voter casts an electronic ballot, the voter's choices may be:
- Marked and printed on a paper ballot for subsequent counting by a paper ballot scanning device; or

- Digitally recorded and counted by the touch screen device, commonly referred to as a Direct Record Electronic (DRE) device.
- 11.1.4 “Election Software” shall mean the software to be installed or residing on election equipment firmware or on election management computers that control election setup vote recording, vote tabulation and reporting.
- 11.1.5 “Electronic Voting Device” shall mean a device by which votes are recorded electronically, including a touch screen system.
- 11.1.6 “Electronic Vote-Tabulating Equipment” or “Electronic Vote-Counting Equipment” shall mean any apparatus that examines and records votes automatically and tabulates the result, including but not limited to optical scanning equipment. The term includes any apparatus that counts votes electronically and tabulates the results simultaneously on a paper tape within the apparatus, that uses an electronic device to store the tabulation results, and that has the capability to transmit the votes into a central processing unit for purposed of a printout and an official count.
- 11.1.7 “Electromechanical Voting System” shall mean a system in which an elector votes using a device for marking a paper ballot using ink or another visible substance and the votes are counted with electronic vote-tabulating equipment, or a system in which votes are directly recorded electronically within the equipment on paper tape and are recorded simultaneously on an electronic device that permits tabulation at a counting center.
- 11.1.8 “Firmware” shall mean computer programs, stored on read-only memory devices or other electronic circuitry in voting devices, WHICH control the basic operation and functioning of those devices.
- 11.1.9 “Logic and Accuracy Test (LAT)” shall mean a step by step documented review of a voting device’s ability, prior to use in any election, to produce accurate results on voter choices for the candidates and ballot issues in an election. The Logic and Accuracy test shall fulfill the requirements OF the Public Test as identified in section 1-7-509(2), C.R.S.
- 11.1.10 “Precinct Count” shall mean a ballot counting process whereby voting totals are tabulated for single/multiple precincts OR single/multiple ballot styles at individual polling place locations.
- 11.1.11 “Secure” as USED in section 1-7-505, C.R.S., shall mean any method of preventing the use of the voting equipment prior to and after all legal votes are cast.
- 11.1.12 “Vote Center Count” shall mean a ballot counting process whereby cumulative voting totals are tabulated for multiple precincts and multiple ballot styles at multiple locations.
- 11.1.13 “V-VPAT” shall mean “voter verified paper record” as defined in section 1-1-104(50.6), C.R.S.
- 11.1.14 “Voting System” shall mean a system that facilitates the process of casting, recording, and tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures of casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.
- 11.1.15 “Voting System Provider” shall mean an individual engaged in private enterprise or a business entity engaged in selling, leasing, marketing, designing, building, or modifying

voting systems to the state, a political subdivision of the state, or another entity authorized to hold an election under Title 1 of the Colorado Revised Statutes.

11.1.16 "Zero Tape" shall mean a printout of the internal data registers in electronic vote-tabulating equipment indicating that those registers contain values of "Zero (0)" and reflect no voter choices for any candidate or ballot issue.

11.2 Voting System Access

11.2.1 The county clerk and recorder shall not program or operate the voting system subject to section 1-5-607, C.R.S.

11.2.2 Any election setup materials shall be stored by the county clerk and recorder under security with access limited to the person or persons so authorized in writing by the county clerk and recorder.

11.2.3 Employees of the county clerk and recorder who are authorized by the county clerk and recorder to prepare or maintain the voting system or election setup materials shall be deputized by the county clerk and recorder for this specific purpose and so sworn prior to the first election of the calendar year in which they will be performing one or more of these activities.

11.2.4 The county clerk and recorder shall request an Internet Criminal History Check (ICHC) from the Colorado Bureau of Investigation (CBI) for all full-time, part-time, permanent and contract employees of the county who staff the counting center and who have any access to the electromechanical voting systems or electronic vote tabulating equipment. At the direction of the county clerk and recorder, an ICHC check may be conducted on election judges. The county clerk and recorder shall request the ICHC once per calendar year for such employees prior to the first election of the year.

11.2.5 If the ICHC indicated that the employee or contract employee has been found guilty of a crime involving breach of trust, fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or election offenses pursuant to sections 1-13-101 *et seq.*, C.R.S., the county clerk and recorder shall prohibit such employee or contact employee from preparing, programming, operating, using or having any access whatsoever to electromechanical voting systems or electronic vote tabulating equipment at any time during that person's employment.

11.2.6 Vendors or their authorized representatives shall provide a criminal history check to the county clerk and recorder for any employee of the vendor who has any access to electromechanical voting systems or electronic vote tabulating equipment. The vendor shall provide the criminal history check to the county clerk and recorder once per calendar year for such employees prior to the first election of the year.

11.3 Performance Bond

11.3.1 Effective upon the date of the adoption of this rule, a Voting System Provider or service provider that provides election setup or tabulation services to one or more counties shall:

- (a) Provide the services by written contract, a copy of which shall be kept on file with the county clerk and recorder and the Secretary of State;
- (b) Post a Performance Bond, executed by a corporate surety licensed to transact business in the State of Colorado. The county under contractual obligation with

the Voting System Provider or service provider that provides election setup or tabulation services shall be designated as the Beneficiary of the bond; and

- (c) Provide proof that a performance bond has been posted with the Secretary of State and the office of the designated election official. The amount of the bond shall be the greater of either \$10,000 or the full amount of the contract with the beneficiary county.

11.3.2 Performance bonds shall be on file 30 (thirty) days prior to any work commencing under contract with the county.

11.3.3 The Voting System Provider shall update all bond documents for each contract or election performed.

11.3.4 Copies of the performance bond for the secretary of state's office shall be sent to: Colorado Department of State, Voting Systems Specialist, 1700 Broadway, Suite 270, Denver, Colorado 80290, or to voting.systems@sos.state.co.us

11.4 Voting System Inventory

11.4.1 The designated election official shall maintain an inventory record for each electronic vote-tabulating device used in an election. Such records shall include but not be limited to the manufacturer, make, model, serial number, hardware/firmware/software version or release number, date of acquisition, description of any services, repairs, maintenance, upkeep, and version upgrades, and the dates of performance of such services as of the date of adoption of these rules.

11.4.2 The designated election official shall furnish the Secretary of State with an extract or copy of the inventory for use in the Logic and Accuracy Test and the Post-Election Audit Test. The requirements for this extract are:

- (a) Be in either electronic or paper format;
- (b) Contain information regarding: make, model, serial number, type (optical scanner or DRE), specific location of use, and specific precincts programmed on each device or card;
- (c) Inventories maintained in electronic format shall be exportable to an industry standard file type – comma separated (CSV), excel spreadsheet (XLS), or Quote or Tab separated (TXT) file prior to electronic delivery to the Secretary of State; and
- (d) The designated election official shall send the inventory list to the Secretary of State's office not less than ten (10) days prior to an election to the attention of the Voting Systems Specialist. Inventory lists may be sent in one of three means: E-mail: voting.systems@sos.state.co.us Subject line = County Number, County Name, HARDWARE INVENTORY LIST; or Via facsimile to: 303-869-4861 attn: Secretary of State, Voting Systems Specialist; or via First Class Mail to Colorado Department of State/Attn: Voting Systems Specialist/1700 Broadway – Suite 270/Denver, CO 80290.

11.5 Voting System Testing

11.5.1 Three types of voting system testing shall be performed for each election within a jurisdiction. The three tests are:

- A Hardware Diagnostic Test;
- A Logic and Accuracy Test (LAT); and
- A Post-Election Audit Test.

11.5.2 Hardware Diagnostic Test

11.5.2.1 The county clerk and recorder shall commence the Hardware Diagnostic Test prior to the election and allow time for each electronic voting device within the county to be tested. Each device being used in the election, including units identified as spare or backup units, shall be tested to verify that mechanical components are working correctly. This test shall include, but not be limited to, the following tests:

- (a) All input and output devices;
- (b) Communications ports;
- (c) System printers;
- (d) System modems when applicable;
- (e) System Screen displays;
- (f) Boot performance and initializations;
- (g) Firmware loads;
- (h) Software loads;
- (i) Confirmation that screen displays are functioning; and
- (j) Date, time and calibration of systems.

11.5.2.2 Each device tested shall be sealed upon the successful completion of the test. Documentation of the seal information must be maintained for each device.

11.5.3 Logic and Accuracy Test

The designated election official shall conduct a Logic and Accuracy Test according to the following requirements.

11.5.3.1 The designated election official shall create a Testing Board consisting of at least two persons, one from each major political party.

11.5.3.2 Prior to the commencement of voting, the designated election official shall conduct the public Logic and Accuracy Test.

11.5.3.3 The Logic and Accuracy test shall be open to representatives of the press and the public to the extent allowable and pursuant to section 1-7-509(2)(b), C.R.S. The designated election official may limit the number of representatives from each group to accommodate for space limitations and other considerations.

- 11.5.3.4 Testing Board Test Ballots – In preparation for the Logic and Accuracy Test, the designated election official shall provide to each member of the Testing Board, at least twenty-five (25) ballots that are clearly marked as test ballots to be used for the Logic and Accuracy Test.
- 11.5.3.5 The members of the Testing Board shall secretly vote their position and retain a record of the tally of their test votes. The test ballots shall have a known predetermined outcome by the members of the Testing Board's secret vote and tally. Of the twenty-five test ballots, two shall be tested as audio ballots where applicable.
- 11.5.3.6 County Test-Ballots – In preparation for the Logic and Accuracy Test, the designated election official shall prepare a sufficient number of test ballots that represent every precinct which shall include every ballot style, allow for a sufficient number of ballots to mark every vote position for every candidate on every race including write-in candidates, allow for situations where a race may permit an elector to vote for two or more positions, and include overvotes and undervotes for each race.
- 11.5.3.7 The test ballots shall be tested on each type of voting device utilized in a given election and each method of counting. The tests shall include testing of mail-in ballot counting methods, election day counting methods, provisional ballot counting methods, early voting counting methods and audio ballots, if applicable.
- 11.5.3.8 Conducting the Test
 - 11.5.3.8.1 The designated election official and Testing Board shall observe the tabulation of all test ballots by means of the voting device and compare the tabulation with the previously retained records of the test vote count. The cause of any discrepancies shall be corrected prior to the start of vote tabulation.
 - 11.5.3.8.2 Prior to the start of testing, all devices used will have the public counter reset to zero, and presented to the testing board for verification.
 - 11.5.3.8.3 An appropriate number of voting devices will be available and the testing board may witness the necessary programming and/or downloading of memory devices necessary to test the specific precincts.
 - 11.5.3.8.4 The Testing Board and designated election official or his or her designated deputized clerks, as necessary, shall count the test ballots as follows:
 - (a) Mail-in Ballots:
 - (1) All county test ballots shall be counted on at least one, but not more than three, mail-in ballot vote counting devices and have the predetermined total verified to the machine total.

- (2) All Testing Board Member test ballots shall be counted individually with reports generated to verify the machine count to the predetermined hand tally.
- (b) Precinct Count Ballots (Optical Scan and DRE):
- (1) The Testing Board shall randomly select 20% but not more than 10 ballots representing unique precincts from the Testing Board's test ballots.
 - (2) In the event a selected precinct contains a combination of DRE and Optical Scan voting devices, the Testing Board shall decide on the percentage of ballots to be counted on each type of device used for that precinct.
 - (3) The precinct specific county test ballots will be added to the testing board test ballots to be counted on the specific precinct device. The testing board shall manually verify the ballots to be counted prior to any machine count.
 - (4) The Testing Board shall verify the manual count to the voting device count.
- (c) Vote Center Count Ballots – Optical Scan:
- (1) All testing board test ballots shall be counted on at least one, but not more than 5 voting devices designated for Vote Center Counting and have the predetermined total verified to the machine total.
 - (2) All test ballots shall be counted individually with reports generated to verify the machine count to the predetermined tally of the test ballots.
 - (3) The testing board shall randomly select the machines to be tested.
- (d) Vote Center Count Ballots – DREs:
- (1) All testing board test ballots shall be counted on at least one, but not more than 5 DREs designated for Vote Center Counting and have the predetermined total verified to the machine total.
 - (2) All test ballots shall be counted individually with reports generated to verify the machine count to the predetermined tally of the test ballots.
 - (3) The testing board shall randomly select the machines to be tested.
- (e) Early Voting and Provisional Ballots Counted on Optical Scan Devices:

- (1) All test ballots shall be counted on at least one, but not more than five, optical scan devices designated for Early Voting or Provisional Ballot Counting and have the predetermined total verified to the machine total.
 - (2) All test ballots shall be counted individually with reports generated to verify the machine count to the predetermined tally of the test ballots.
- (f) Early Voting and Provisional Ballots Counted on DREs:
- (1) All test ballots shall be counted on at least one, but not more than five, DREs designated for Early Voting or Provisional Ballot Counting and have the predetermined total verified to the machine total.
 - (2) All Testing Board Member test ballots shall be counted individually with reports generated to verify the machine count to the predetermined tally of the Testing Board test ballots.
- 11.5.3.8.5 DREs equipped with V-VPAT devices shall be manually verified (by hand) to determine that the pre-determined total of the testing board ballots, matches the V-VPAT total, which in turn matches the machine total.
- 11.5.3.8.6 At least two of the testing board ballots shall be identified as Audio Ballots to be tested as such, and included with the count.
- 11.5.3.8.7 All test materials, when not in use, shall be kept in a metal box with individual seals for each member of the Testing Board. The designated election official may affix his or her own seal in addition to those of the Testing Board. The designated election official shall be the custodian of the box or boxes but shall not open and/or use the test materials outside of the presence of the Testing Board.
- 11.5.3.8.8 The Testing Board and the designated election official shall sign a written statement attesting to the qualification of each device that was successfully tested, the number of the seal attached to the voting device at the end of the test, any problems discovered, and provide any other documentation as necessary to provide a full and accurate account of the condition of a given device.
- 11.5.3.8.9 Upon completion of the testing, the Testing Board shall witness the resetting and sealing of each tested voting device.

11.5.4 Post-Election Audit

- 11.5.4.1 Within twenty-four (24) hours of the close of polls on election night, the Secretary of State shall notify the designated election official which voting devices and which race or races on the ballots have been selected for auditing purposes based on the submitted hardware inventory list referred to in Rule 11.4.2.

- 11.5.4.2 The selection of equipment will be based on a random selection of five (5) percent of precinct scanner based voting equipment, at least one Central Count Scanner/vote center, and five (5) percent of Direct Record Electronic (DRE) voting devices.
- 11.5.4.3 Pursuant to section 1-7-514, only devices used in the election shall be selected for the audit.
- 11.5.4.4 For optical scanners used for any function of counting ballots except for Central Count/vote center as defined herein, the designated election official shall manually verify all of the ballots that were counted on the randomly selected device(s) with the election summary report that was generated from the device(s) at the close of the polls. The Secretary of State shall randomly select a minimum of two (2) races per device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.
- 11.5.4.5 For Optical Scanners used for the purpose of counting ballots in a Central Count/vote center environment as defined herein, the designated election official shall randomly select five (5) percent but not more than five hundred (500) ballots of all the ballots counted on the specific audited device. If the amount of ballots is less than five hundred (500) on the audited device, then a minimum of twenty percent (20%) of the ballots counted on the device will be manually verified. The public counter for that voting device shall be reset to zero, and the ballots shall be recounted on the voting device. A new report will be generated from the electronic count of the ballots and shall be manually verified. The ballots and a copy of the report shall be sealed in a separate container and secured with the remainder of the official election records for the election. The Secretary of State shall randomly select a minimum of two (2) races per device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.
- 11.5.4.6 For Direct Record Electronic Devices (DREs) that do not meet the requirements of section 1-5-802, C.R.S., used for any function of counting ballots in an election, the designated election official will manually verify the image of all the ballots contained in the Ballot Log or Ballot Audit that were counted on the specific device with the report generated for that specific device at the close of polls which contains the election summary report. The Secretary of State shall randomly select a minimum of two (2) races per device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.
- 11.5.4.7 For Direct Electronic Devices (DREs) that do meet the requirement of section 1-5-802, C.R.S., used for any function of counting ballots in an election, after the close of the polls, the designated election official will manually verify all of the voter verified paper record produced with the report generated for that specific device, which contains the election summary report. The Secretary of State shall randomly select a minimum of two races on each device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.
- 11.5.4.8 The actions of the random audit as identified in this section are to be observed by at least two members of the canvass board. The designated election official may appoint additional deputized clerks to assist in the functions of the audit.

11.5.4.9 If there are discrepancies in the audit, the canvass board or the designated election official's deputized clerks shall:

11.5.4.9.1 First, manually verify the results as many times as necessary to confirm that there is no discrepancy in the manual count;

11.5.4.9.2 Second, take any additional steps as necessary to check for voter error, which shall include but not be limited to: over-votes, stray marks on the ballot, or other voter intent indicia; and

11.5.4.9.3 Third, review the situation and take action as necessary in accordance with the canvass board's powers as set forth in part 1 of Article 10 of Title 1 Colorado Revised Statutes.

11.5.4.10 At all times relevant to the Post-Election Audit, the designated election official or the deputized clerks or the canvass board shall take every precaution necessary to protect the confidentiality of the ballots cast by the electors.

11.5.4.11 Upon completion of the audit, the designated election official shall promptly report the results of the audit to the Secretary of State's Office. The report shall be submitted following the completion of the audit and up to and including 5:00 pm on the last day of the canvass. The report shall contain:

(a) The make, model, and serial number of the voting device that was audited.

(b) The number of ballots originally counted by the device or the number of ballots audited as identified in paragraph (d) of this section;

(c) The count of the specific race or races as provided on the summary report printed at the close of polls or the report generated for the audit;

(d) The count of the specific race as manually verified;

(e) Any other information required by section 1-7-514, C.R.S.; and

(f) The signature of the canvass board and the designated election official.

11.5.4.12 The report may be sent by any of the following three methods: E-mail: voting.systems@sos.state.co.us; Subject line = County Number, County Name, POST-ELECTION AUDIT; or via facsimile to: 303-869-4861 attn: Secretary of State, Voting Systems Specialist; or via First Class Mail to Colorado Department of State/ Attn: Voting Systems Specialist/1700 Broadway – Suite 270/Denver, CO 80290.

11.6 Procedures for Voter-Verifiable Paper Audit Trail (V-VPAT)

11.6.1 Security

11.6.1.1 The V-VPAT record is considered an official record of the election, pursuant to section 1-5-802. All security procedures related to election ballots shall apply to V-VPAT records.

11.6.1.2 The housing unit for any V-VPAT record to be used in the election shall be sealed and secured prior to any votes being cast for the election.

Documentation of the seal number(s) must be maintained and noted prior to voting, and at the conclusion of voting.

- (a) Election Judges shall attest to the V-VPAT record having no votes included on the paper record prior to the start of voting, and prior to the installation or replacement of a new V-VPAT record.

11.6.1.3 If a DRE with V-VPAT is used during early voting, the seal number(s) must be recorded at the beginning and end of each voting day.

11.6.1.4 At the Close of the polls, the V-VPAT records will be transferred to the central office in the same manner as any paper ballots. In the absence of paper ballots, the V-VPAT records will be transferred to the central office in the same manner as any memory cards containing electronic ballots.

11.6.2 Anonymity

11.6.2.1 The Election Official shall put measures in place to protect the anonymity of voters choosing to vote on DREs during the voting periods. These measures shall include:

- (a) Encouraging poll workers to personally vote on DREs when possible to ensure more than one vote will be cast on the device.
- (b) Appropriate marking in Poll Book or other voting list indicating voters choice to vote on DRE with the words: "Voted DRE", or similar in place of paper ballot information. No record shall be kept indicating the order in which people voted on the DRE, or which V-VPAT record is associated with the voter.
- (c) When more than one DRE is available at a voting location, the voter shall be given the choice as to which DRE they would like to vote on, to the extent practical.
- (d) Encouraging or allowing any and all voters the opportunity to vote on a DRE if desired.

11.6.2.2 Any report or export (electronic or paper based) generated from an Electronic Pollbook shall remove the date/time stamp from the record and not use this field as a sort method. Any assignment of Record IDs, Key ID, or Serial Number stored in the database of votes shall be randomly assigned.

11.6.2.3 Any Pollbook, electronic, paper or otherwise shall not be exposed to the same people at the same place who have exposure to the V-VPAT records.

11.6.2.4 The examination of the V-VPAT record shall always be done by at least two witnesses.

11.6.3 Storage

11.6.3.1 The storage of the V-VPAT records must be consistent with storage of Paper Ballots pursuant to section 1-7-802.

11.6.3.2 Individual spools containing V-VPAT records must contain the following catalog information affixed to the spool:

- (a) Date and Name of Election;
- (b) Name of Voting Location;
- (c) Date(s) and Time(s) of Voting;
- (d) Machine Serial Number of DRE Associated with the Record; and
- (e) Number of spools associated with this machine for this election (i.e. "Spool 1 of 1", or "Spool 1 of 2", etc.).

11.6.3.3 Light sensitive storage containers shall be used for the 25 month storage period to ensure the integrity of the V-VPAT paper record. Containers shall be sealed, with record of the seal numbers maintained on file and signed by two elections officials.

11.6.3.4 A master catalog shall be maintained for the election containing the complete total number of V-VPAT spools used in the election.

11.7 Escrow of County Election Setup

11.7.1 No later than 5:00pm on the seventh (7th) day prior to any election, the designated election official shall deposit a copy of the election setup records with the Secretary of State's office by mail.

11.7.2 Jurisdictions that have contracted with either a Software Service Bureau or a Vendor of Electronic Vote Counting Equipment may choose to have the necessary election setup records delivered to the Secretary of State's office within the specified time frame.

11.7.3 Election Setup Records shall be contained within an electronic media format that is native to the jurisdictions specific ballot creation and tabulation system. Acceptable media formats range from Tape, Diskette, Cartridge, CD-ROM, DVD-ROM, Floppy, External Hard Drive, or Flash Media.

11.7.4 All copies of electronic media shall be sent to:

Colorado Secretary of State

Attn: Voting Systems Specialist

1700 Broadway – Suite 270

Denver, CO 80290

11.7.5 Jurisdictions will include a point of contact and method of contact (phone, fax, e-mail, etc.) to inform the jurisdiction that the Secretary of State's office has received the election setup records.

11.7.6 Within 24 hours of receipt of the election setup files, the Secretary of State or his or her designee will contact the jurisdiction to confirm receipt of the escrow files.

11.7.7 The Secretary of State's office will store the setup files in a secured, fire proof, limited access location or container.

- 11.7.8 All parties shall treat as confidential all escrowed materials and any other related information that comes into their possession, control or custody pursuant to this rule.
- 11.8 Escrow of Voting System Software by Voting System Provider
- 11.8.1 Voting System Providers must place in escrow a copy of the election software and supporting documentation being certified with either the Secretary of State or an independent escrow agent approved by the Secretary of State. See section 1-7-511, C.R.S.
- 11.8.2 Within ten days of the Voting System provider receiving notification of examination of voting equipment as part of the certification process, the Voting System Provider shall arrange for the completion of escrow requirements as indicated by this rule.
- 11.8.3 Voting System Provider shall sign a sworn affidavit that the election software in escrow is the same as the election software used in its voting systems in this state. An annual update of the affidavit will be on file in a secured location with the Secretary of State's office.
- 11.8.4 A complete copy of the certified election software including any and all subsystems of the certified software shall be maintained in escrow.
- 11.8.5 Any changes to current configurations or new installations must be approved through the certification program of the Secretary of State.
- 11.8.6 In addition to the requirements listed below, the Voting System Provider must include a cover/instructions sheet for any escrow material to include the Voting System Provider Name, Address and pertinent contact information, Software Version, Hardware Version, Firmware Revision Number and other uniquely identifying numbers of the software submitted for certification.
- 11.8.7 Election Software Source Code, maintained in escrow, shall contain internal documentation such that a person reasonably proficient in the use of the programming language can efficiently use the documentation to understand the program structure, control techniques, and error processing logic in order to maintain the Source Code should it be removed from escrow for any reason.
- 11.8.8 System documentation shall include instructions for converting the escrowed Source Code into Object Code, organized and configured to produce an executable system, if warranted.
- 11.8.9 System documentation shall include technical architecture design, analysis, detail design, testing and an installation and configuration guide.
- 11.8.10 A set of schematics and drawings on electronic vote casting and counting equipment purchased or in use by the county clerk and recorder shall be on file with the Secretary of State.
- 11-8-11 All parties shall treat as confidential the terms of this Section including all escrow materials and any other related information that comes into their possession, control or custody pursuant to this section.
- 11.8.12 Copies of Electronic media and supporting documentation for Escrow within the Secretary of State shall be sent to:

Colorado Secretary of State
Attn: Voting Systems Specialist
1700 Broadway – Suite 270
Denver, CO 80290

11.8.13 Any cost of using an alternative third party escrow agent shall be borne by the Voting System provider.

Rule 12. Rules Concerning Mail Ballot Elections

12.1 Definitions.

12.1.1 A secrecy sleeve or secrecy envelope shall be sealed or closed on at least two sides, one of which shall be the bottom of the sleeve.

12.1.1.1 The secrecy sleeve or secrecy envelope shall be uniform within each type of mail-in ballot or mail ballot voting system used in the State of Colorado. Each secrecy sleeve, secrecy envelope, or voter instructions used in the State of Colorado in any mail ballot or mail-in ballot election shall contain the following required language, approved by the Secretary of State, regarding identification requirements of voters who have registered by mail:

(a) “First Time Voters Who Register By Mail”

“If you registered in your county by mail, and did not submit proof of identification in accordance with section 1-2-501, C.R.S., a copy of one of the forms of identification listed in Rule 30.1.6 is required with your mail ballot or your absentee ballot.”

(b) “Failure to provide ID will result in your ballot being treated as a provisional ballot. Provisional ballots are counted when registration is verified.” See section 1-7.5-107(3.5)(d), C.R.S.

12.1.2 A separate mail ballot plan is not required from a political subdivision if a county clerk and recorder submits a mail ballot plan for a coordinated election which includes the political subdivision.

12.2 Election Judges.

12.2.1 The designated election official for the election may appoint an appropriate number of judges to receive the ballots after they are mailed, to handle “walk-in” balloting and mail-in ballots at the sites designated for “walk-in” balloting, to check registrations, to inspect, verify, and duplicate ballots when necessary, and to count the ballots and certify results.

12.3 Notice of elections.

12.3.1 Call and notice.

(a) Notice of the election is to be sent to the clerk and recorder of the county in which the election is to be held. The notice is to include the date by which the list of registered electors is to be submitted to the political subdivision.

- (b) For multi-county political subdivisions, the notice sent to each clerk and recorder shall also include the names of all other counties in which the election will be held.

12.3.2 As soon as possible, but no later than sixty-five (65) days prior to a regular special district election and no later than fifty-five (55) days prior to any other election, a written plan must be submitted to the Secretary of State which includes the following:

- (a) Date of the election;
- (b) Type and name of jurisdiction involved in the election;
- (c) Description of the type of election to be conducted;
- (d) Citation of the statute or home rule charter provisions authorizing the election;
- (e) Estimated number of eligible electors;
- (f) Name of the designated election official who will be responsible for all aspects of the election;
- (g) Indication of whether the county clerk and recorder will assist in the election for the entity other than by providing a list of registered electors and other information required by statute;
- (h) Total number of "places of deposit". For security reasons, unmonitored freestanding places of deposit located outside will not be allowed;
- (i) For elections coordinated by the county clerk and recorder, the total number of walk-in voting locations;
- (j) Number of accessible voting machines anticipated being used for walk-in voting locations in elections coordinated by the county clerk and recorder;
- (k) Length of time accessible voting machines will be available for walk-in voting in elections coordinated by the county clerk and recorder;
- (l) Written timetable for the conduct of the election in accordance with the statute;
- (m) Indication of how postage will be handled for ballot packets returned as undeliverable (e.g. "return postage guaranteed");
- (n) Indication of procedures to be followed to ensure compliance with statutes and rules, including persons responsible for each stage;
- (o) Description of procedures to be used to ensure ballot security at all stages of the process;
- (p) Description of procedures for maintaining privacy and security of accessible voting machines to be used in an election coordinated by the county clerk and recorder;
- (q) Description of procedures to be used for signature verification;
- (r) Description of procedures to ensure privacy by use of a secrecy sleeve or secrecy envelope so receiving judges cannot tell how the elector voted;

- (s) Description of procedures to be used to reconcile ballots issued, ballots received, defective ballots and substitute ballots; and
 - (t) An actual sample of the secrecy sleeve or secrecy envelope to be used in the mail ballot election.
- 12.3.3 For elections coordinated by the county clerk and recorder, a security plan shall be submitted in accordance with Rule 43 in addition to the mail ballot plan submitted in accordance with this Rule.
- 12.3.4 Written timetable specifications:
- (a) The designated election official shall prepare a written timetable for conducting the mail ballot election with specific dates or range of dates when each activity is to be completed;
 - (b) The timetable shall include the following dates:
 - (1) Copy of written plan to governing body;
 - (2) Date of approval of election by governing body;
 - (3) Date of submission of written plan to Secretary of State's office;
 - (4) Anticipated date of approval by Secretary of State;
 - (5) Date of publication of notice of election;
 - (6) Date of notice of election to the county clerk;
 - (7) Date of notice of election to the county assessor, if property owners are eligible to vote in the election;
 - (8) Date of close of registration;
 - (9) Date by which the county clerk and recorder must submit the list of eligible electors to the political subdivision and, if property owners are eligible to vote in the election, the date by which the county assessor must submit the list of property owners;
 - (10) For elections coordinated by the county clerk and recorder, date notice will be given to voters of walk-in voting and accessible voting options;
 - (11) Date ballots will be mailed;
 - (12) Date verification and counting of ballots will begin; and
 - (13) Date of the election.
- 12.3.5 A special district required to submit a mail ballot plan in accordance with section 1-7.5-105, C.R.S. and this Rule, may request a seven (7) day filing extension if the plan is being submitted for a regular special district election that may be cancelled.
- (a) A request for such extension shall be submitted to the Secretary of State no later than two (2) business days prior to the deadline for submitting the mail ballot plan.

- (b) The request shall contain a brief statement of the reasons for such request.
- (c) The Secretary of State shall notify the special district of the approval/disapproval of the request within one (1) business day.

12.4 Ballots.

- 12.4.1 In any election where a multiple page printed ballot is used, a voter must vote and return all pages of the ballot at the same time. Any voter who has returned at least one page of a multiple page printed ballot will be considered to have voted.
- 12.4.2 For elections where multiple ballots will be included in the same packet or will be sent in separate packets, the ballots and return envelopes shall include distinctive markings or colors to identify political subdivisions when the colors or distinctive markings will aid in the distribution and tabulation of the ballots.
- 12.4.3 The designated election official for each political subdivision for whom one or more county clerk and recorders are conducting the election shall assure that a complete list of eligible electors in their political subdivision is sent to each appropriate county clerk and recorder, unless otherwise provided in the intergovernmental agreement. The political subdivision shall list each elector only once to assure that each elector receives one and only one ballot unless otherwise authorized.
- 12.4.4 For coordinated mail ballot elections, each county clerk and recorder may compare the lists submitted by the various political subdivisions to assure that each elector receives the appropriate ballot or ballots for the election.
- 12.4.5 For all coordinated elections where more than one mail ballot is being mailed or polling place elections are being held as well as the mail ballot election, the outgoing envelope as well as the instructions or other notice shall have the following notice: "This may not be your only ballot. Other elections may be held by other political subdivisions by mail or by polling place."
- 12.4.6 If the ballot is returned to the election official as undeliverable, the official shall not be required to re-mail the ballot packet.
- 12.4.7 The designated election official shall require that the eligible elector submit a copy of his or her identification as defined in Section 1-1-104(19.5), C.R.S., with the elector's ballot in the return envelope if the eligible elector registered to vote by mail pursuant to Part 5, Article 2, Title 1, C.R.S. and did not provide the required ID upon registration.
- 12.4.8 The county clerk and recorder shall indicate on the list of registered voters requested by the designated election official those registered voters required to be identified in Rule 12.4.6, unless such registered voter either:
 - (a) Submitted as part of the registration by mail a copy of the elector's identification as defined in Section 1-1-104(19.5), C.R.S.; or
 - (b) Votes pursuant to Section 1-7-111(2), C.R.S.; or
 - (c) Is otherwise entitled to vote under any federal law.
- 12.4.9 If the elector is required to provide his or her identification, the outside of the return envelope shall be marked to identify such envelope.

- 12.4.10 If the marked return envelope does not contain proper identification, the ballot shall be treated as a provisional ballot. The outside of the return envelope shall be marked "provisional". For non-partisan elections, the provisional ballot shall be verified and counted in accordance with Rule 26.
- 12.4.11 All return envelopes used in a mail ballot election coordinated by the county clerk and recorder shall be formatted in such a manner that the voter's signature on the back of the envelope is concealed. [Sections 1-7.5-106 and 1-7.5-107, C.R.S.]
- a. Any county may apply to the Secretary of State for an exemption to this requirement by submitting a written application based on hardship or other good cause shown.
 - b. All applications for an exception shall include a statement of the hardship or good cause for which the exception is sought. The Secretary of State shall have ten (10) business days to approve or disapprove an application for such exemption.
- 12.5 Mail-in and Early Voting.
- 12.5.1 In a mail ballot election, an elector who will be absent from his or her address of record and requests that a mail ballot be sent to an alternate address, shall be issued a mail ballot in accordance with section 1-7.5-107, except that the return envelope shall contain the affidavit set forth in section 1-8-114, C.R.S.
- 12.5.2 An "in person" request for a ballot that is delivered to the absent elector in the clerk and recorder's office may be filed any time after January 1 of the year of the election, but no later than the close of business on the Friday prior to the election; except that, if the applicant wishes to receive the ballot by mail, the application shall be filed no later than the close of business on the seventh day before the election.
- 12.5.3 Upon receipt of a request for a mail-in ballot, the designated election official shall deliver the original ballot or a replacement ballot to that elector.
- 12.5.4 A record shall be made on the registration rolls that a request for a mail-in ballot was received, a ballot was mailed to the alternate address, and the ballot number shall be recorded.
- 12.5.5 For mail ballot elections, the notation "Mail-in Ballot No. M.I.V.____" shall not be required on the mail-in ballots.
- 12.5.6 Establishment of polling place for early voting shall not be required for a mail ballot election, however the location for walk-in balloting shall be maintained.
- 12.6 Receipt of Ballots
- 12.6.1 One or more judges shall be appointed for the site to which ballots are to be mailed to receive the ballots as mailed.
- 12.6.2 Each day when ballots come in, a judge shall count the ballots, batch them and record the number of ballots received.
- 12.6.3 The ballots shall be date-stamped when received. If any ballot is received after the time set for the closing of the elections, the ballot shall be date-stamped but the ballot shall not be counted.

- 12.6.4 Records shall also be kept of the number of ballot packets returned as undeliverable.
- 12.6.5 Ballot packets shall then be placed in a safe, secure place until the counting of the ballots.
- 12.7 If a voter has been directed to return a document with his/her voted ballot, the election judge shall open the returned envelope to retrieve the required form. If the required form cannot be found in the return envelope, the election judge shall open the secrecy envelope/sleeve to find the required form or document in an effort not to disenfranchise the voter.
- 12.8 For any non-matching or missing signature on a mail ballot return envelope, Rule 29 concerning procedures for the verification of signatures shall be followed.
- 12.9 Ballots Delivered in Person.
 - 12.9.1 All "places of deposit" shall be accessible to disabled electors.
 - 12.9.2 All "places of deposit" and any walk-in voting locations shall be located within the political subdivision where feasible. If a political subdivision desires to establish a "place of deposit" or a site for walk-in voting outside of the county, municipality or district, permission must be obtained from the Secretary of State.
 - (a) The designated election official shall state the reasons for requesting such exception in the mail ballot plan submitted to the Secretary of State for approval.
 - (b) The alternate location proposed by the designated election official shall be within reasonable proximity to the political subdivision or the majority of the electors of the political subdivision.
 - 12.9.3 Any eligible elector may deliver in person to the designated or coordinated election official's office no more than 5 voted mail ballots from members of his or her household.
- 12.10 Replacement Ballots for Purpose of Mail Ballot Elections.
 - 12.10.1 Requests for replacement ballots may be made in writing, by mail, by fax, by email, or by telephone.
 - 12.10.2 An elector requesting a replacement ballot shall complete a sworn statement, as required by section 1-7.5-107(3)(d)(I), C.R.S., on a form provided by the designated election official. If the elector requests that the replacement ballot be mailed, the form may be included in the ballot packet mailed to the eligible elector, and must be received on or before election day by the election official.
 - 12.10.3 The election judge issuing a replacement ballot shall indicate on the outside of the return envelope whether a sworn statement must be returned with the voted ballot. No replacement ballot shall be counted until it has been determined that an affidavit has been completed by the voter and has been received on or before election day by the election official.
- 12.11 Surrender of Mail Ballot
 - 12.11.1 In an election coordinated by the county clerk and recorder, any voter may surrender a mail ballot to the designated election official and vote in-person on the accessible device provided for the election as required by section 1-5-705 C.R.S.

12.11.2 The election judge receiving the surrendered ballot shall indicate on the outside envelope that the ballot is cancelled. The voter's record shall be updated to give the voter credit for voting in a manner that maintains the secrecy of the ballot.

12.11.3 Any accessible device used in accordance with this rule shall be subject to the privacy, security and accuracy standards set forth in the Election Rules and Title 1, C.R.S.

12.12 Judges Duties.

12.12.1 The judges shall record the results of the election on the judges' certificate and statement.

12.12.2 The judges shall deliver the results of the election to the designated election official along with all election materials.

12.12.3 The judges shall deliver all election materials bound separately as follows:

(a) Ballots which were counted;

(b) Ballots which were defective, as defined in 1-7-309(4);

(c) Additional ballot pages returned after the voter cast his/her ballot that were appropriately marked and not counted in accordance with rule 12.4.1;

(d) Ballots/ return envelopes which may be challenged;

(e) Return envelopes with ballots removed;

(f) Defective return envelopes with ballots inside;

(g) Ballot packets which were returned as undeliverable.

12.13 Canvass of votes/certificates of election.

12.13.1 Elections can be challenged as provided in the enabling statute of the entity calling the election.

12.13.2 The failure of an elector to receive a ballot will not by itself be sufficient grounds for the challenge of an election, so long as the designated election official acted in substantial compliance with Title 1, Article 7.5, C.R.S. or the rules promulgated thereunder by the Secretary of State.

Rule 13. Rules Concerning Mail-in Voting

13.1 All election materials prepared by the designated election official, including the Article X, Section 20 notice, may be included in the mail-in ballot packet.

13.2 The county clerk and recorder shall keep a list, to the extent possible, of the names and mailing addresses of all individuals who deliver more than five (5) voted mail-in ballots to the designated or coordinated election official's office or the designated drop site for mail-in ballots.

13.3 The county clerk and recorder shall notify each individual on the list required by 13.2 by letter that they have violated section 1-8-113, C.R.S., by delivering more than five (5) mail-in ballots to the

designated election official.

- 13.4 The designated election official shall require that the eligible elector submit a copy of his or her identification as defined in section 1-1-104(19.5), C.R.S., with the elector's ballot in the return envelope if the eligible elector registered to vote by mail pursuant to Part 5, Article 2, Title 1, C.R.S., and failed to include the copy with the original registration or failed to supply a driver's license number, Colorado Department of Revenue ID number or at least the last four digits of a social security number that was subsequently verified per Rule 30.3.
- 13.5 The county clerk and recorder shall indicate on the list of registered voters requested by the designated election official those registered voters required to be identified in Rule 13.4.
- 13.6 In any election where a multiple page printed ballot is used, a voter must vote and return all pages of the ballot at the same time. Any voter who has returned at least one page of a multiple page printed ballot will be considered to have voted. Any additional page returned at a later time shall not be counted but shall be appropriately marked, set aside, and preserved as other election materials in accordance with section 1-7-802, C.R.S.
- 13.7 If the elector is required to provide his or her identification, the outside of the return envelope shall be marked to identify such envelope. A county may use additional methods to communicate the requirement to provide identification. The elector shall also be provided with specific instructions on the requirement to provide such identification.
- 13.8 If the marked return envelope does not contain proper identification, the ballot shall be treated as a provisional ballot. The outside of the return envelope shall be marked "provisional". The provisional ballot shall be verified and counted in accordance with section 1-8.5-105(5), C.R.S.
- 13.9 If a voter has been directed to return a document with his or her voted ballot, the election judge shall open the returned envelope to retrieve the required form. If the required form cannot be found in the return envelope, the election judge shall open the secrecy envelope/sleeve to find the required form or document in an effort to not disenfranchise the voter.
- 13.10 For any non-matching or missing signatures on a mail-in ballot return envelope, Rule 29 concerning procedures for the verification of signatures shall be followed.
- 13.11 The designated election official's duties under section 1-8-112, C.R.S., are triggered if the U.S. mail is delivered collectively to the residential facility. If the U.S. mail is delivered to individuals or individual mailboxes, the requirements of section 1-8-112, C.R.S., shall not be applicable.
- 13.12 Voters who appear in person at their correct polling place, but who requested mail-in ballots, will nevertheless be permitted to cast provisional ballots upon their declaration that they have not and will not cast any vote in the election other than by that provisional ballot. The provisional ballot is then to be counted, once election officials determine that the voter did not in fact cast the mail-in ballot.
- 13.13 Permanent Mail-in Voting. An application for a mail-in ballot received by the county clerk and recorder shall be treated as an application for permanent mail-in ballot only if the applicant makes such designation. If the applicant does not specify the length of the request for a mail-in ballot, the application shall be treated as an application for the current calendar year. If the applicant marks both the permanent and calendar year boxes, the application shall be treated as an application for permanent mail-in ballot.
- 13.14 A county clerk and recorder using the "Ballot Now" system to print mail-in ballots shall print and make ballots available no later than thirty-two (32) days preceding the election in accordance with section 1-5-403, C.R.S. Ballot issuance shall begin no later than seventy-two (72) hours after

printing is complete in accordance with 1-8-111, C.R.S.

- 13.15 A county clerk and recorder who utilizes a third party vendor to mail ballots shall be considered to be in possession of the ballots for the purposes of sections 1-5-403 and 1-8-111, C.R.S., when the vendor has prepared the ballots for mailing, but no later than thirty-two (32) days preceding the election in accordance with section 1-5-403, C.R.S.
- 13.16 In addition to the language required by section 1-8-101(4)(a), C.R.S., the secrecy sleeve and instructions shall contain a statement that "All valid mail-in ballots are counted in every election in Colorado, regardless of the outcome or closeness of any race."
- 13.17 All return mail-in ballot envelopes used in an election coordinated by the county clerk and recorder shall be formatted in such a manner that the voter's signature on the back of the envelope is concealed.
 - 13.17.1 Any county may apply to the Secretary of State for an exemption to this requirement by submitting a written application based on hardship or other good cause shown.
 - 13.17.2 All applications for an exception shall include a statement of the hardship or good cause for which the exception is sought. The Secretary of State shall have ten (10) business days to approve or disapprove an application for such exemption.

Rule 14. Rules Concerning Recount

- 14.1 Each designated election official who conducts a recount shall follow the specific procedures outlined by the Secretary of State for the equipment used for the election.
- 14.2 The Secretary of State shall prepare a letter that specifies the procedures to be used for the recount which shall be sent to the designated election official upon receipt of the notice of a recount.
- 14.3 The purpose of a recount is to review the ballots to assure they were counted properly. Unless directed otherwise by the Secretary of State, all procedures of election night shall be followed as closely as possible during the recount, including an examination of the ballots.
- 14.4 General Provisions
 - 14.4.1 The Secretary of State may have an official observer at every recount location.
 - 14.4.2 Any candidate who is subject to the recount may be present and observe the recount at any recount location or designate one Watcher to observe the recount at any recount location. Watchers must provide the election official with a certificate signed by the candidate, except that an officer of the county party may be accepted as a candidate's watcher without a certificate if no other person is designated by the candidate for that location.
 - 14.4.3 Each candidate, his or her watcher, members of the media, and official observers as defined in Rule 8.1, may be present in the room when a recount is conducted. During the recount the candidate, watcher, members of the media, and official observers may not interfere with the recount process.
 - 14.4.4 The recount board-, candidates, watchers, members of the media, and official observers will take an oath.

14.4.5 Candidates, watchers, members of the media, and official observers who enter the recount room after the recount begins must stay until the recount is complete. Anyone who must leave the recount room will not be allowed to re-enter the recount room without the specific consent or authorization of the designated election official.

14.4.6 All votes for all candidates in any race subject to a recount shall be counted.

14.5 Counting of Paper Ballots - Recount

14.5.1 Totals of recounted ballots shall be processed, counted, and reported in summary form as follows:

- (a) Sum total of votes cast for each candidate, under-votes, and over-votes for all precincts;
- (b) Sum total of votes cast for each candidate, under-votes, and over-votes for all mail-in ballots (a combined total, not totaled by individual precincts or locations, unless the voting system so allows.);
- (c) Sum total of votes cast for each candidate, under-votes, and over-votes for all early voting precincts (a combined total, not totaled by individual precinct or locations, unless the voting system so allows.);
- (d) Determine grand total of ballots cast by early voting, mail-in voting, and precinct voting.

14.5.2 If mail-in ballots were originally counted with early voting ballots, then the recount will be of a combined total of early and mail-in ballots.

14.5.3 Ballot boxes or containers shall be opened one at a time.

14.5.4 Ballots shall be counted into groups of 25 to ensure that the number of ballots recounted matches the number originally counted.

14.5.5 Votes shall be counted by individual hash marks in 25-count sections by two different judges.

14.6 Counting of Ballots - Recount

14.6.1 All voting equipment to be used in the recount must be tested prior to the recount, utilizing the procedures set forth in this section. Prior to the recount, the canvass board shall choose at random and test Voting Devices and precinct(s) to be utilized as a test deck for purposes of section 1-10.5-102. The purpose of a test deck is to assure the tabulation machines are counting properly. The devices chosen shall contain at least five (5) ballots cast. A hand tally shall be conducted of the selected devices pursuant to section 1-10.5-102(3)(a). The totals of the recounted contest obtained from the test devices and precinct(s) reports from close of polls shall be compared to the hand-tallied total.

14.6.2 The canvass board shall choose at random five percent (5%) of voting devices containing votes from the election, which are affected by the recount, for the test.

- (a) Prior to the start of the test, the canvass board shall verify that devices randomly chosen were not used in the audit conducted pursuant to section 1-7-514 (1)(b).

- (b) The proportion of Optical Scan devices to DRE/electronic voting devices selected for the test shall match the proportion of machines used in the election by the designated election official.
 - (c) At least one device selected for the test shall be a central count/mail-in ballot scanner.
- 14.6.3 For testing central count/mail-in scanners the canvass board shall randomly select one percent (1%) or fifty (50) ballots, whichever is greatest. A blank prom cartridge, rom cartridge or memory card shall be utilized for the test. The ballots selected shall be processed through the central count/mail-in scanner and compared to the hand-tallied total.
- 14.6.4 If the test deck totals differ from the hand count totals, and the discrepancy cannot be accounted for by voter error, all ballots containing the recounted contest shall be tallied by hand following procedures for paper ballot recounts. If the test deck totals are exactly the same, the recount tabulation shall be conducted in the same manner as the original ballot count in accordance with section 1-10.5-102(3)(b).
- 14.6.5 A clear audit trail shall be maintained throughout the recount including, but not limited to, a log of seal numbers on transfer cases or ballot boxes as defined in section 1-7-505, C.R.S., and the corresponding numbered seal used as a replacement for the original seal, upon completion of the recount of ballots within that transfer case or ballot box.
- 14.6.6 The number of ballots counted by a precinct according to the election night report shall be available during the recount for comparison purposes.
- 14.6.7 Totals of recounted ballots shall be processed, counted, and reported in summary form as follows:
- (a) Sum total of votes cast for each candidate, ballot issue or ballot question subject to the recount, under-votes, and over-votes for all precincts;
 - (b) Sum total of votes cast for each candidate, ballot issue or ballot question subject to the recount, under-votes and over-votes for all mail-in ballots (a combined total, not totaled by individual precincts or location, unless your system allows);
 - (c) Sum total of votes cast for each candidate, ballot issue or ballot question, subject to the recount, under-votes, and over-votes for all early voting locations (a combined total, not totaled by individual precinct or locations, unless the voting system so allows);
 - (d) Determine the grand total of ballots cast in early, mail-in, and precinct voting.
- 14.6.8 If mail-in ballots were originally counted with early voting ballots, then the recount will be of a combined total of early and mail-in ballots.
- 14.6.9 Ballots shall be reviewed for voter intent.
- 14.6.10 Utilizing one or more blank prom cartridge, rom cartridges, or memory card, all precinct ballots shall be counted within all precincts. After the individual precinct is counted, the ballots shall be returned to the ballot container and sealed.
- 14.6.11 Utilizing one or more blank prom cartridge, rom cartridges, or memory card, all early

voting ballots shall be counted. After an individual ballot container is counted, the ballots shall be returned to the ballot container and sealed.

14.6.12 Utilizing one or more blank prom cartridges, rom cartridges, or memory card, all mail-in ballots shall be counted. After an individual ballot container is counted, the ballots shall be returned to the ballot container and sealed.

14.7 Counting of Ballots Using the “Ballot Now” Voting System

14.7.1 In the case of a recount, the designated election official shall identify all precincts with the contest(s) designated for a recount using the following procedures:

(a) Using the Ballot Now Scanned Ballots by Precinct report from the original election database, locate the batches containing any ballot type (Election, Mail-in, and Provisional) for the recount.

(b) Remove ballots from each batch and label them as “Recount”.

14.7.2 Required scanner testing shall be performed using a test deck from at least three (3) randomly chosen precinct(s) with at least 150 ballots total as prescribed by statute, following testing procedures outlined in the State of Colorado Procedures for the use of the Ballot Now Voting System. A Recount Test spreadsheet shall be created based on the chosen precinct in the same fashion as the ballot options test spreadsheet.

14.7.3 Ballots for the recount shall be processed following the State of Colorado Procedures for the use of the Ballot Now Voting System in conjunction with the following procedures:

(a) Open Ballot Now with an unused MBB (Mobile Ballot Box) from the election and create a Ballot Now recount database;

(b) Scan and resolve all recount ballots following original election procedures, including the examination of ballots (Rule 14.3; section 1-8-10.5-102, C.R.S.) Use the Audit Trail Report and original Scan Batch Reports with notes to ensure resolution action follows original resolution.

(c) Save all recount CVRs (Cast Vote Records) to the MBB (Mobile Ballot Box) after verifying that the number of ballots processed matches the number of ballots cast in the recount contest(s).

(d) Open a new recount election in “Tally” and process the recount MBB following the tabulation procedures above.

(e) Compare recount results to original results and document any differences.

(f) Backup the test database and the official recount database following the “Archive” procedures.

Rule 15. Rules Concerning Preparation Filing, and Verification of Statewide Initiative Petitions

15.1 Each petition shall be verified according to the procedures set forth in Rule 7.1.

15.2 No petition shall be accepted which lists proponents other than the two identified as petition representatives pursuant to section 1-40-104, C.R.S.

- 15.3 Proponents may begin circulating a petition for signatures at any time after the final decision of the title board, including disposition of any motion for rehearing or the expiration of the time for filing a motion for rehearing, and after the Secretary of State has approved the format of the petition as provided in section 1-40-113 (1), C.R.S., whether or not an appeal is filed with the Supreme Court pursuant to section 1-40-107 (2). The six-month period specified in section 1-40-108 (1) shall begin on the date that the first signature is affixed to the petition or, in the case of an appeal to the Supreme Court, on the date that the decision of the Supreme Court becomes final, whichever date occurs first. Signatures shall be counted only if affixed to the petition during the period provided in this rule.
- 15.4 Only one filing of a petition or an addendum is allowed. After a petition or an addendum is filed, the petition or the addendum may not be supplemented with additional signatures. If additional signatures are submitted after the original filing, such signatures shall not be counted, even if such signatures are submitted within the time permitted by law for the filing of the original petition or addendum.
- 15.5 Verification by Random Sample
- 15.5.1 Each petition section shall be verified according to the procedures set forth in Rule 17.1.
- 15.5.2 Preliminary count and generation of random numbers.
- a. After the entries have been counted for each petition section, a data entry clerk shall enter the following data into the database; the petition identification number, the petition section number, the page number and the number of entries on the page.
 - b. A record shall then be created for each entry, which record shall contain the petition identification number, petition section number, page number and the entry number. The total number of entries submitted for the petition shall be tallied.
 - c. If the number of entries is less than the total number of signatures required to certify the measure to the ballot, a statement of insufficiency shall be issued.
 - d. A series of random numbers shall be generated by the database which is the greater of four thousand (4,000) signatures or five percent (5%) of the total number of entries.
- 15.5.3 Verification of Selected Entries
- a. The random numbers selected shall be matched with the appropriate petition section, page number, and entry number.
 - b. Each entry generated shall be checked for validity in accordance with Rule 17.1.
 - c. Each reason for rejection of an entry shall be recorded by separate code and a master record of the rejected entries shall be maintained. A master record shall also be maintained of each entry that is accepted.
- 15.5.4 Checking the circulator's affidavit. The circulator's affidavit shall be checked for each entry in accordance with Rule 17.2. If the affidavit is not attached and completed, all entries in the section shall be rejected.

15.5.5 Checking individual signatures. Each individual signature shall be checked in accordance with Rule 17.3.

15.5.6 Computation of total accepted signatures.

- a. A tally shall be made of the number of accepted signatures and the number of rejected signatures.
- b. The Secretary of State shall determine the range of signatures by multiplying the constitutionally required number of signatures by 0.90 to compute ninety percent (90%) of the required signatures and by 1.10 to compute one hundred and ten percent (110%) of the required signatures. This number shall be calculated after the general election at which the Secretary of State was elected.
- c. After completing a petition, the number of signatures checked shall then be divided into the number of accepted signatures. This number will be the percentage of accepted signatures which were submitted.
- d. The percentage calculated in paragraph c of this Rule 15.5.6 shall then be multiplied by the total number of entries which were previously tallied. This number will be the number of presumed valid signatures which were submitted.
- e. If the number generated is ninety percent (90%) or less of the constitutionally required number of signatures as calculated in paragraph b of this Rule 15.5.6, then the Secretary of State shall issue a statement of insufficiency. If the number generated is one hundred and ten percent (110%) or more of the constitutionally required number, then the Secretary of State shall issue a statement of sufficiency.
- f. If the number generated is more than ninety percent (90%) but less than one hundred and ten percent (110%) of the required number, the Secretary of State shall order that each signature on the petition be verified to determine whether the issue or question should be certified to the ballot.

Rule 16. Rules Concerning Verification by Random Sample of Statewide Initiative Petitions - Repealed

Rule 17. General Rules Concerning Verification of Petitions

17.1 General procedures concerning verification of petitions.

17.1.1 No petition shall be accepted which lists proponents other than those authorized by law.

17.1.2 When the petitions are received, each section shall be date-stamped and consecutively numbered with a four digit number. The number may be printed by a printer, hand-stamped with a manual stamp, or handwritten.

17.1.3 Each petition shall be either an individual sheet for signatures or multiple sheets that are stapled together.

- 17.1.4 Each section shall be checked for evidence of disassembly. If it appears that the section was disassembled, all entries in the section shall be rejected.
 - 17.1.5 The lines on each petition section shall be consecutively numbered. The block of information which consists of the printed last name, first name, middle initial, county, signing date, street address, city, and signature is considered a line.
 - 17.1.6 If the number of entries is less than the total number of signatures required to certify the measure to the ballot, a statement of insufficiency shall be issued.
 - 17.1.7 Each line with writing shall be counted on each petition and shall be considered an entry. The number of entries for each page of the section shall be written on the page and the total entries for the section shall be written on the face of the petition section.
 - a. A line that has no writing or marks on it shall not be considered an entry.
 - b. A line that has writing on it but is completely crossed out shall not be considered an entry.
 - c. A line which has writing on it but is incomplete or on its face contains an invalid signature or which is partially crossed out shall be considered an entry to be included in this count.
- 17.2 Checking the circulator's affidavit.
- 17.2.1 The circulator's affidavit shall be checked for each entry. If the affidavit is not attached and completed, all entries in the section shall be rejected.
 - 17.2.2 The notary clause at the end of the affidavit shall be checked for each entry. If any information is missing, or if the date on the notary clause is not the same date as the circulator signed the affidavit, all entries in the section shall be rejected.
 - 17.2.3 The circulator's affidavit shall be checked to assure it has been completed in accordance with the statutory requirements listed below. If the affidavit was not completed in accordance with the requirements listed below, all entries in the section shall be rejected.
 - a. For candidate petitions, the circulator's affidavit shall be completed in accordance with section 1-4-905(1) and (2), C.R.S.
 - b. For initiative petitions, the circulator's affidavit shall be completed in accordance with section 1-40-111(2), C.R.S.
- 17.3 Checking individual signatures.
- 17.3.1 Each individual entry shall be checked against the master voter registration files to assure that the elector was an eligible elector in the political subdivision at the time the petition was signed.
 - 17.3.2 Each reason for rejection of an entry shall be recorded by separate code and a master record of the rejected entries shall be maintained. A master record shall also be maintained of each entry that is accepted.
 - 17.3.3 If the information on the current voter registration file does not match the information on the entry, the elector's voter registration history shall be checked to determine if the

information on the entry matches the voter registration file at the time the entry was signed.

- 17.3.4 Name of eligible elector. To be accepted, the name on the entry must be in a form similar to that found on the voter registration record. Signatures that are common variants of the name found on the voter record shall be counted. If the signer of the petition is not found on the voter registration file, or if applicable, the county assessors' list, the entry shall be rejected.
- 17.3.5 Middle initial and additional terms.
- a. If the middle initial or middle name is not part of either the signature line or the voter record but is included on the other document, if the first and last name are the same on both documents, the entry shall be accepted.
 - b. If the middle initial or middle name on the signature line is different than the middle initial or middle name on the voter record, the entry shall be rejected.
 - c. If an indicator such as Jr., Sr., or II is present or omitted from the petition or the voter record, the entry shall be accepted. If two persons with the same name reside at the same address as found on the master voter list, the entry shall be rejected, unless the identity of the signer can be conclusively determined.
- 17.3.6 Address of eligible elector.
- a. If the address written on the line does not match the address on the voter record or on the voter history for the date when the signature was taken, the entry shall be rejected.
 - b. If the address on the petition either includes or omits a letter or number identifying an apartment or the directional location of a street, such as "E" for east, "SW" for southwest, etc., the entry shall be accepted.
 - c. If the signer gave a post office box for the address, the entry shall be rejected.
- 17.3.7 Incomplete information. If the line of the petition is incomplete, with at least one piece of information omitted, the entry shall be rejected.
- 17.3.8 Date of signing.
- a. If a signature is placed on the petition prior to the final approval of the petition format by the designated election official, the entry shall be rejected.
 - b. If the signer was not an eligible elector in the political subdivision at the time of signing, the entry shall be rejected.
 - c. If a signature is placed on the petition after the date on the circulator's affidavit, the entry shall be rejected.
- 17.3.9 Assistance to signer. If assistance appears to have been given to the signer and a statement of assistance does not accompany the signature or mark explaining the variance in the script, the entry shall be rejected.
- 17.3.10 Illegible signature. If the signature and printed name are illegible so that the voter record cannot be verified, the entry shall be rejected.

- 17.3.11 Duplicate signature. If the elector has previously signed the same petition, the first valid entry shall be counted and all other entries shall be rejected.
- 17.3.12 Where an elector may sign more than one petition, the first signature(s) filed up to the maximum allowed, shall be the ones that are counted.
- 17.4 Final Tally. After all of the sections have been checked, a final tally of all valid signatures shall be prepared and the statement of sufficiency or insufficiency issued.

Rule 18. Rules Concerning Statement of Sufficiency for Petitions

- 18.1 Within the time required by statute, the designated election official shall issue a statement of sufficiency or insufficiency.
- 18.2 The statement shall contain the name of the petition, the proponents, and the date the petition was submitted for verification.
- 18.3 The statement shall indicate the total number of entries, the total number of entries accepted, and the total number of entries rejected.
- 18.4 The statement shall indicate whether an insufficient number of entries were submitted, the number of presumed valid signatures if a random sample was conducted, and the number of valid signatures counted if every entry was counted.
- 18.5 Records. The designated election official shall assure that a record of all signatures rejected and the reasons for each rejection be maintained as public records.

Rule 19. Rules Concerning Cure for Statewide Petitions

- 19.1 Cure of petitions deemed insufficient.
- 19.2 If the proponents submit additional signatures within the permitted time, all signatures submitted in the addendum shall be checked using the process delineated in Rule 16 and Rule 17.
- 19.3 If the number of valid signatures in the addendum when added to the number of valid signatures given in the statement of insufficiency equals 110% or more of the required signatures, a statement of sufficiency shall be issued.
- 19.4 If the number of valid signatures in the addendum when added to the number of valid signatures given in the statement of insufficiency equals more than 90% but less than 110% of the required signatures and the initial check was by random sample, all of the previously submitted entries shall be checked. The total of valid signatures in the original petition shall then be added to the number of valid signatures submitted in the addendum.
- 19.5 If the initial check was of every entry, then the total of valid signatures shall be added to the number of valid signatures submitted in the addendum.
- 19.6 The designated election official shall then issue a new statement of insufficiency or sufficiency which reports the total number of valid signatures submitted.

Rule 20. Rules Concerning Protests

- 20.1 A protest shall specifically state the reasons for the challenge to the determination of sufficiency or insufficiency.
 - 20.1.1 A protest that alleges specific statutes or rules were improperly applied shall clearly state the specific requirements that were improperly applied.
 - 20.1.2 A protest that alleges that entries were improperly accepted or rejected shall clearly identify the specific individual entries at issue and the reason the entries were improperly accepted or rejected.
- 20.2 The protest shall be deemed insufficient for each entry or class of entries challenged where the individual entry is not listed or the reason for the challenge is not given.
- 20.3 Where a petition verified by random sample is protested, proponents and opponents may protest the process by which the numbers used in the calculations were generated.

Rule 21. Rules Concerning Ballot Issue Elections

- 21.1 Placing measures on the ballot for coordinated odd-year elections.
 - 21.1.1 For statewide elections, the Secretary of State shall be responsible for determining whether the proposed initiative concerns state matters arising under Section 20 of Article X of the State Constitution and is eligible to appear on the ballot at an odd-year election.
 - 21.1.2 For elections concerning counties or other political subdivisions, if the election is held as a coordinated election, each political subdivision shall determine whether the proposed initiative or referred measure is a local government matter arising under Section 20 of Article X of the State Constitution.
- 21.2 Written comments concerning ballot issues submitted to the designated election official for the political subdivision shall not be withdrawn after the end of the business day on the last Friday immediately preceding the forty-fifth day before the election.

Rule 22. Rules Concerning Checking Candidate and Issue Petitions – Repealed

Rule 23. Rules Concerning Referendum Petitions. Sections 1-40-132 and 1-1-107(2)(a), C.R.S.

- 23.1 Applicability. This Rule 23 applies to statewide referendum petitions pursuant to Article V, Section 1 (3) of the Colorado Constitution.
- 23.2 Relationship to statutory and constitutional provisions.
 - 23.2.1 The purpose of this Rule 23 is to administer and interpret, but not supersede, the provisions of Article V, Section 1, Colorado Constitution, and Article 40 of Title 1, Colorado Revised Statutes which apply to referendum petitions.

23.2.2 Where there is an irreconcilable conflict between this Rule 23 and any such statutory or constitutional provision, then such statutory or constitutional provision prevails.

23.3 Applicability of initiative statutes.

23.3.1 Except where this Rule 23 otherwise provides, or where the context otherwise requires, any statutory or constitutional provision that applies specifically to initiative petitions shall also apply to referendum petitions.

23.3.2 The following procedural steps that apply to initiative petitions do not apply to referendum petitions:

(a) Review and comment by legislative staff on the text of proposed initiated constitutional amendments and initiated laws, pursuant to Article V, Section 1 (5), Colorado Constitution, and section 1-40-105, C.R.S.

(b) Title-setting by the title setting review board established in section 1-40-106, C.R.S.

23.4 Approval of referendum petition form.

23.4.1 No referendum petition shall be printed, published, or otherwise circulated unless the form and the master original to be used for printing or reproduction have been approved by the Secretary of State. Section 1-40-113(1), C.R.S.

23.4.2 A referendum petition may be submitted to the Secretary of State for approval at any time after the bill has been presented to the governor for approval or disapproval. The Secretary of State shall not issue final approval of the referendum petition form until the bill has become law pursuant to Article IV, Section 11 of the Colorado Constitution.

23.4.3 Each referendum petition section shall consist of the following, in the order listed: Sections 1-40-113(1), and 1-40-102(6), C.R.S.

(a) The warning as specified in Section 1-40-110, C.R.S.

(b) The heading "Referendum Petition", followed by the demand upon the Secretary of State in substantially the following form, in which the underlined material is only for example:

"To: The Honorable _____, Secretary of State of the State of Colorado

We, the undersigned electors of the State of Colorado, do hereby respectfully petition, order, and demand that Sections 1 to 12, inclusive (being the entire Act), of House Bill No. 02-1010, by Representatives Abel, Baker, and Cain, and Senators Smith, Thomas, and Jones, entitled "Concerning registration requirements for motor vehicles, and, in connection therewith, authorizing two- and five-year registration periods and authorizing discretionary vehicle identification number inspections, and making an appropriation", passed by the Sixty-third General Assembly of the State of Colorado, at its regular session in the year 2002, shall be submitted to the voters for their adoption or rejection at the next biennial regular general election, to be held on Tuesday, the 5th day of November, 2002, and each of the signers of this petition says:

I sign this petition in my own proper person only, and I am a registered elector of the State of Colorado, my residence address and the date of my signing this petition are correctly written immediately after my name, and I do hereby

designate the following persons to represent me in all matters affecting this petition:"

- (c) The name and mailing address of two persons who are designated to represent the signers thereof in all matters affecting the same.
- (d) The ballot title and submission clause in the form required by this Rule 23.
- (e) The text of the Act, or the item(s), section(s), or part(s) of the Act, on which the referendum is demanded. See sections 1-40-110; 1-40-102(6).
- (f) Succeeding pages that each contain the warning, the ballot title, and submission clause, and ruled lines numbered consecutively for electors' signatures.
- (g) A final page that contains the circulator's affidavit required by section 1-40-111(2), C.R.S.

23.4.4 Each referendum petition section shall include only the matters required by Article 40, Title 1, C.R.S., and this Rule 23, and no extraneous material. Section 1-40-113(1), C.R.S.

23.5 Ballot Title and Submission Clause.

23.5.1 The ballot title shall consist of the title of the act on which the referendum is demanded, followed by the bill number, in substantially the following form, in which the underlined material is only for example:

"An Act concerning registration requirements for motor vehicles, and, in connection therewith, authorizing two- and five-year registration periods and authorizing discretionary vehicle identification number inspections, and making an appropriation, being House Bill No. 02-1010."

23.5.2 When referendum is demanded on less than an entire Act of the General Assembly, the ballot title and submission clause shall consist of the ballot title preceded by words in substantially the following form, in which the underscored material is only for example, and ending in a question mark:

"Shall Section 3 (concerning definition of terms) and Section 4 (eliminating licensing requirements for motor vehicle dealers) of the following Act of the General Assembly be approved:" The material in parentheses shall correctly and fairly summarize the subject or the effect of the portion of the Act referenced.

23.6 Election. If a referendum petition is timely filed with the Secretary of State with a sufficient number of valid signatures, it shall be voted upon at the next general election that occurs at least three months after the referendum petition is filed with the Secretary of State.

Rule 24. Rules concerning Congressional Term Limits Declaration

24.1 The Secretary of State shall make available to every candidate for United States House of Representatives or the United States Senate the Congressional Term Limits Declaration provided in Article XVIII, Section 12a of the Colorado Constitution. The Secretary of State will offer the Congressional Term Limits Declaration to every such candidate when the candidate files his or

her candidate affidavit with the Secretary of State. Any failure of the Secretary of State to offer the Congressional Term Limits Declaration to a candidate shall have no effect on such candidate's candidacy.

- 24.2 Part A of the Term Limits Declaration shall be accepted by the Secretary of State if Part B of the Term Limits Declaration has not been duly executed and submitted. Art. XVIII, sec. 12a (7)
- 24.3 In the case of a candidate who has qualified as a candidate for a term that would exceed the number of terms set forth in Term Limits Declaration One, the Secretary of State shall not place the words, "Signed declaration to limit service to [3 terms] [2 terms]" after the candidate's name, even if the candidate has executed and submitted Parts A and B of Term Limits Declaration One.

Rule 25. Rules Concerning Uniformed and Overseas Citizens' Absentee Voting Act ("UOCAVA")

25.1 UOCAVA Fax Ballot Rules:

- 25.1.1 U.S. citizens who are absent from the state and who are members of the Uniformed Services as defined as the U.S. Armed Forces (Army, Navy, Marines, Air Force, and Coast Guard), Merchant Marine, and their spouses or dependants, resident overseas electors, or nonresident overseas electors who are otherwise qualified to apply for and vote by mail-in ballot, ("UOCAVA citizens"), may request a mail-in ballot by facsimile transmission.
- 25.1.2 A designated election official may send and receive mail-in ballot applications by facsimile transmission, send blank ballots and accept voted ballots by facsimile transmission from eligible electors who are UOCAVA citizens absent from the state and who are otherwise qualified to vote by mail-in ballot.
- 25.1.3 The office of each county clerk and recorder shall have a dedicated fax machine located in their office in order to send and receive faxed ballots to and from UOCAVA citizens in accordance with the Help America Vote Act of 2002 and this Rule 25.
- 25.1.4 On the faxed application, the elector shall provide the fax number, including the international country code and local area, province or city code (if applicable), where the ballot shall be faxed.
- 25.1.5 A mail-in ballot that is completed and returned by the elector via facsimile transmission must contain the elector's printed name, signature, date of birth, and the following statement: "I am a member of the Uniformed Services, a member of the Merchant Marine, spouse/dependant of a Uniformed Services Member or Merchant Marine, resident overseas elector or a nonresident overseas elector and am qualified to apply for and vote by mail-in ballot. I also understand that by faxing my voted ballot, I am voluntarily waiving my right to a secret ballot."

25.2 Limited Electronic Mail Ballot Rules

- 25.2.1 A uniformed services elector serving outside the United States may receive and return an application for, or a mail-in ballot by electronic mail in circumstances where a mail ballot or fax ballot is not available or feasible.
- (a) An application for an electronic mail ballot must be received no later than close of business the Friday immediately preceding the election

- (b) An email request for a replacement ballot must be received by 5:00 p.m. Mountain Time on election day.
- 25.2.2 Upon receipt and verification of an application, the designated election official shall authorize the transmission of a blank ballot containing all contests and questions for which the elector is eligible to vote.
- (a) The designated election official shall fax the election materials, which shall include a blank ballot and voter instructions (including the elector affidavit) to the Federal Voting Assistance Program (FVAP) Electronic Transmission Service (ETS). The designated election official shall not send the voting materials directly to the elector by electronic mail. Or,
 - (b) The designated election official may store the ballot electronically with ETS using the procedures outlined in the FVAP ETS Guide, and authorize the transmission of the blank ballot and instructions (including the elector affidavit) to the elector by faxing a completed electronic transmission coversheet to ETS.
- 25.2.3 The electronic package transmitted to ETS shall contain:
- (a) A completed electronic transmission coversheet;
 - (b) The blank ballot, if not stored with ETS, with voting instructions (including the elector affidavit); and
 - (c) The contact information for the designated election official including: name, title, mailing address, email address, phone, and fax number.
- 25.2.4 A ballot that is completed and returned by the elector via electronic mail must contain the elector's printed name, signature, date of birth, and the following statement: "I am a member of the Uniformed Services and am qualified to apply for and vote by mail-in ballot. I also understand that by transmitting my voted ballot by electronic mail, I am voluntarily waiving my right to a secret ballot."
- 25.2.5 To return a voted ballot and affidavit by electronic mail, the elector must have access to the technology to scan the documents, save the documents in a secure format, and return the documents as an electronic mail attachment.
- 25.2.6 Upon receipt of the voted ballot, the designated election official shall verify the elector's signature pursuant to section 1-8-114.5, C.R.S. and Rule 29. Upon verification of the elector's signature, the ballot shall be duplicated pursuant to 1-8-103.5(2) C.R.S. and processed.
- 25.3 Overall UOCAVA Requirements
- 25.3.1 If the designated election official has mailed a Clarification for Voter Status Memorandum to an elector in response to receiving mail-in ballot request and has not received a response to the memo at the time the mail-in ballot packet is prepared, the designated election official shall mail the elector a full ballot for which the elector, as a resident, would be eligible to vote (federal, state, local offices, and questions).
- 25.3.2 Mail-in ballots sent by ETS or facsimile transmission shall be in text format on 8 ½" x 11" white paper to increase the readability of the ballot and to avoid possible misinterpretations of the elector's intended choice because of poor transmission of the document.

- 25.3.3 Instructions sent by ETS or faxed to the elector with the blank ballot shall be in text format on 8 ½" x 11" white paper and shall include the following information:
- (a) The dedicated fax number or email address for ETS to which the voted ballot shall be returned (if applicable);
 - (b) The total number of pages transmitted;
 - (c) The total number of ballot pages;
 - (d) The telephone number or e-mail address where the eligible elector may send questions regarding the ballot;
 - (e) A notice that the ballot shall not be duplicated for any other elector;
 - (f) A notice that once the ballot is returned by an elector, it will be counted pursuant to section 1-8-116(4), C.R.S.; however, if an elector requests a replacement ballot, the first ballot returned will be counted pursuant to section 1-8-111(3), C.R.S.;
 - (g) A notice that the voted ballot must be received by the clerk and recorder or Secretary of State no later than 7:00 p.m. Mountain Time on election day;
 - (h) A request for an e-mail address to which a confirmation notice of receipt of the ballot may be sent at the discretion of the county clerk and recorder; and
 - (i) Any other information deemed necessary by the Secretary of State or the designated election official.
- 25.3.4 The designated election official shall fax a blank ballot with the instructions to the fax number provided by the elector, or to ETS (if applicable). If the transmission is unsuccessful, the designated election official shall attempt to fax the ballot at least two more times.
- 25.3.5 Mail-in ballot applications returned via facsimile transmission or electronic mail by the elector to the county clerk and recorder or the Secretary of State via ETS shall be received in the clerk and recorder's office or the Secretary of State's office no later than the close of business on the Friday immediately preceding the election.
- 25.3.6 Any voted ballot by a Uniformed Services elector or an overseas elector received by the office of the Secretary of State by 7:00 p.m. Mountain Time on election day shall be forwarded to the appropriate county clerk and recorder by overnight mail, fax, or courier no later than the next business day. The office of the Secretary of State shall immediately notify the appropriate county clerk and recorder of the receipt and forwarding of the ballot.
- 25.3.6.1 If a county is notified by the Secretary of State by 7:00 p.m. on election day that a mail-in ballot has been received by the office of the Secretary of State, the clerk and recorder shall retain a minimum of ten (10) voted ballots, which shall be counted with the ballot received by the Secretary of State to ensure voter secrecy.
- 25.3.7 Any ballot transmitted to an elector by ETS or facsimile shall contain a unique identification number for tracking and auditing purposes.

- 25.3.8 A log shall be kept by the designated election official of each ballot transmitted to an elector by ETS or facsimile indicating:
- (a) The name of the elector;
 - (b) The fax number to which the ballot was sent, or email address (if applicable);
 - (c) The unique identification number of the ballot;
 - (d) The date the ballot and instructions were transmitted; and
 - (e) The initials of the employee of the designated election official transmitting the ballot.
- 25.3.8.1 The electronic transmission log as well as any other ETS or fax records shall be maintained as part of the official election record.
- 25.3.9 The county clerk and recorder shall report to the Secretary of State's office no later than sixty (60) days from the date of the election:
- (a) The combined number of mail-in ballots transmitted (faxed, mailed, and transmitted via ETS)
 - (b) The combined number of mail-in ballots that were returned (faxed, mailed, and transmitted via ETS);
 - (c) The total number of mail-in ballots that were counted (faxed, mailed, and transmitted via ETS).

Rule 26. Rules Concerning Provisional Voting

26.1 General Rules Regarding Provisional Voting

- 26.1.1 Eligible electors who have moved within the State of Colorado before the registration deadline may vote a provisional ballot at the polling place on Election Day or in the clerk and recorder's office or designated offices.
- 26.1.2 If the provisional ballot envelope is used as a voter registration form, it is subject to the same requirements as any other voter registration form.
- 26.1.3 An elector who has requested a mail-in ballot shall be permitted to cast a provisional ballot upon his or her declaration that they have not and will not cast any vote in the election other than by that provisional ballot.
- 26.1.4 Provisional ballots for voters who have requested mail-in ballots shall be separated from other provisional ballots and shall not be counted until all mail-in ballots cast in the election have been counted.
- 26.1.5 For the purposes of Article 8.5 of C.R.S. and this Rule 26, "statewide offices" shall be defined as the following:
- Governor-Lieutenant Governor (as a pair)

- Attorney General
- Secretary of State
- Treasurer
- Regent of the University of Colorado- At Large

26.2 Emergency Registration and use of Provisional Ballots in the County Clerk and Recorder's Office

26.2.1 If the elector applies for an emergency registration that cannot be qualified in the clerk's office at the time of the registration pursuant to section 1-2-217.5(4), C.R.S., the elector shall be issued a provisional ballot. The elector's registration must be confirmed by the designated election official at the time that the provisional ballots are verified or the provisional ballot shall not be counted.

26.2.2 If an elector whose name is not in the registration records, appears in person at the county clerk and recorder's office and states that he or she has timely registered through an agency pursuant to section 1-2-504, C.R.S., can affirm to the name, location of, and approximate date he or she completed the application at the agency or provide an application receipt, and provides an ID as defined in section 1-1-104(19.5), C.R.S., the elector shall be offered emergency registration and be offered a regular ballot.

26.2.2.1 If the elector does not provide an ID the elector shall be offered a provisional ballot. The county clerk and recorder shall note on the provisional ballot envelope that the elector did not have an ID.

26.2.2.2 If the elector is able to produce an application receipt from the agency registration, but does not provide an ID pursuant to section 1-1-104(19.5), C.R.S., the elector shall surrender the receipt to the election judge, and the county clerk and recorder shall attach the receipt to the provisional ballot envelope.

26.2.3 If an elector whose name is not in the registration records, appears in person at the county clerk and recorder's office and states that he or she has timely registered through a Voter Registration Drive ("VRD") pursuant to section 1-2-504, C.R.S., can affirm to the location of, and approximate date he or she completed the application with the VRD or provide an application receipt, and provides an ID as defined in section 1-1-104(19.5), C.R.S., the elector shall be offered emergency registration and be offered a regular ballot.

26.2.3.1 If the elector does not provide an ID the elector shall be offered a provisional ballot. The county clerk and recorder shall note on the provisional ballot envelope that the elector did not have an ID.

26.2.3.2 If the elector is able to produce an application receipt from the VRD registration, but does not provide an ID pursuant to section 1-1-104(19.5), C.R.S., the elector shall surrender the receipt to the election judge, and the county clerk and recorder shall attach the receipt to the provisional ballot envelope.

26.2.4 If the elector's eligibility to vote cannot be verified, the provisional ballot shall not count, but may constitute a registration for future elections.

26.3 Provisional Voting in the Polling Place

26.3.1 If the elector does not provide a date in the "Previous Residence Information" section of the provisional ballot envelope stating when the elector moved to the address he or she listed as his or her legal residence on the provisional ballot envelope, the designated election official shall attempt to verify the provisional ballot. If the provisional ballot can be verified, it shall be counted. If it cannot be verified, it shall not be counted.

26.3.2 If the elector whose name does not appear on the pollbook states that he or she applied to register to vote prior to the close of registration with a VRD or agency pursuant to Section 1-2-504, C.R.S., the election judge shall:

- Offer the elector a provisional ballot;
- Ask the elector to surrender the application receipt;
- Check the box on the provisional ballot envelope indicating that the voter is a VRD or agency applicant, and
- Attach the receipt to the outside of the provisional ballot envelope.

26.3.3 The word "provisional" shall be marked on the provisional ballot and on the pollbook or signature card next to the elector's name.

26.4 Verification of Provisional Ballots

26.4.1 When the designated election official has concluded that all voted provisional ballots have been delivered to and received by the election office, the designated election official shall determine the time that provisional verification and processing begins in accordance with the deadlines set forth in title one and these rules. The designated election official or designee shall complete preliminary verification without opening the provisional ballot envelopes.

26.4.2 When verifying provisional ballots, the designated election official must check the county voter registration database to see whether the elector has already voted in the election.

26.4.3 When the designated election official has received both a mail-in ballot and a provisional ballot from an elector, but there is a discrepancy between the signature on the returned mail-in ballot envelope and the voter's signature on file with the county clerk and recorder, the discrepancy must be resolved. Before the provisional ballot may be counted, the elector must affirm that the signature on the mail-in ballot envelope is not his or her signature. Section 1-8.5-105(4) and (5), C.R.S.

26.4.4 Verification of an elector's eligibility to have his or her provisional ballot counted shall be limited to the following sources to determine proof of voter registration:

- (a) Sources provided by the Secretary of State or law enforcement agencies regarding felons who are serving a sentence of detention or confinement or on parole;
- (b) The local election office voter registration database;
- (c) The Secretary of State's voter registration database;

- (d) The DMV Motor Voter database (Note: Possession of a driver's license is not conclusive proof of voter registration; elector must have registered to vote through the DMV.)

26.5 Counting of Provisional Ballots

26.5.1 If the information contained in the provisional ballot envelope provides adequate criteria so that the designated election official is able to confirm under election rule 26 that the elector is registered, the provisional ballot shall count.

26.5.2 Pursuant to section 1-2-509(3), C.R.S., if the designated election official receives a provisional ballot from a voter who registered to vote but had an incomplete or deficient voter registration application, and did not supply the required information at the time of registration, at any time prior to voting, or on the provisional ballot envelope, the provisional ballot shall not be counted. If the voter does supply the required information prior to or at the time of voting, then the provisional ballot may be counted.

26.5.3 Acceptance Codes (Any provisional ballot given an acceptance code shall have all races counted unless otherwise indicated.)

AOK Reviewed and confirmed voter's eligibility.

ADB Election official is knowledgeable that the elector was erroneously sent to the wrong precinct or erroneously given the wrong ballot style in the elector's correct precinct. Voted ballot will be duplicated and only races and issues for which the elector is qualified to vote shall be counted.

AEJ Election judge who was appointed after close of early and mail-in voting and is working outside his or her precinct; judge shall vote on a ballot in the precinct in which he or she is working; voted ballot will be duplicated so that only the races and issues for which the judge is qualified to vote shall be counted.

AAB Voter appeared in person and affirmed under oath that he or she applied for a mail-in ballot but he or she has not and will not cast the mail-in ballot. The designated election official shall determine that voter did not previously cast a mail-in ballot for that election pursuant to Rule 26.

ACP Voter moved from the county in which the voter was registered to another county in the state not less than thirty days before the election and voted in the correct precinct in the new county of residence. The voter's address will be updated. Section 1-8.5-107(2)(a), C.R.S.

AFS Voter is registered in the county but is voting in the wrong precinct or the voter moved from the county in which the voter was registered to another county in the state less than thirty days before the election. Only the votes for federal and statewide offices and statewide ballot issues and questions upon which the voter may vote shall be counted. Section 1-8.5-108(2), C.R.S.

AVD Voter registered through a voter registration drive and the application receipt was surrendered to the election judge, or the elector affirmed as to the approximate date and location of the registration with the voter registration drive in accordance with section 1-2-217.5(2), C.R.S.

- AAG Voter registered through an agency and application receipt was surrendered to election judge, or the elector affirmed as to the date, name, and location of the registration with the agency in accordance with section 1-2-217.5(2), C.R.S.
- ARD Voter had deficient or incomplete registration. The required information was provided by voter on the provisional ballot envelope. Voter's registration will be amended and registration will be complete. Section 1-2-509(3), C.R.S.

26.5.4 Rejection Codes (Any ballot given a rejection code shall not be counted):

- RFS (Rejection federal or state) No federal or state candidates or issues to duplicate.
- RNS (Rejection not signed) Provisional Ballot Affidavit not signed.
- RIN (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
- RNR (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to section 1-2-605(10), C.R.S.
- REE (Rejection envelope empty) Provisional ballot envelope is empty.
- RAB (Rejection voter voted mail-in ballot) Designated election official has confirmed that voter voted a mail-in ballot.
- REV (Rejection based on ballot cast in early voting) Voter voted early.
- RIP (Rejection based on incorrect party) Incorrect Party in Primary Election.
- RFE (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
- RWC (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
- RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
- RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established. Section 1-2-509(3), C.R.S.

26.6 The provisional ballot log required by section 1-8.5-110 (4), C.R.S., may be prepared by the designated election official in handwritten or computer-generated form.

26.7 Recount procedures for provisional ballots shall be the same as the recount procedures for other ballots as directed by the Secretary of State.

- 26.8 Pursuant to section 1-8.5-102(2), C.R.S., the provisional ballot affidavit shall contain the following language:

I do solemnly affirm that I am a citizen of the United States, that I have attained the age of eighteen years, and that I have resided in the State of Colorado and in my present precinct at least thirty days before the election, or at my current residence address since the date I moved as shown above. I further affirm that the address indicated in this affidavit is my sole legal residence and that I claim no other place as my legal residence. I affirm that if I applied for a Mail-in Ballot I have not and will not cast the Mail-in Ballot that I requested. I further affirm under penalty of law that I have not and will not cast any vote in this election except by the enclosed ballot, that I will not vote in any other precinct, county or state, and that my ballot is enclosed in accordance with the provisions of the "Uniform Election Code of 1992", Article 1 to 13 of Title 1, C.R.S.

- 26.9 Pursuant to section 1-8.5-103, C.R.S., the size of the provisional ballot envelope or affidavit form shall be in such a manner as to provide to the elector complete and legible information as shown on the state approved form. Any alterations to the standard format shall be submitted to the secretary of state pursuant to the policy statement concerning secretary of state approved forms.

Rule 27. Rules Concerning Uniform Ballot Counting Standards

27.1 Definitions

- 27.1.1 Blank Ballot. A blank ballot is one on which the voter has made no marks in any voting position, or has been marked with an unreadable marker, or is one which has been consistently marked outside of the "read" area of the scanner.
- 27.1.2 Damaged Ballot. A damaged ballot is one that has been torn, bent, or otherwise mutilated or rendered unreadable, so that it cannot be processed by the optical scanner ballot reader.
- 27.1.3 Duplicated Ballot. A duplicated ballot is one for which a true copy is made in order to be properly processed and counted due to damage, improper marking or some other reason which would prevent a ballot tabulating machine from accurately counting the ballot.
- 27.1.4 Duplicated Provisional Ballot. A duplicated provisional ballot includes ballots duplicated for federal and state issues for which a provisional voter is eligible to vote.
- 27.1.5 Overvote. An overvote is a race, question or issue which contains votes for more than the maximum number of candidates or responses for a ballot question or issue allowed.
- 27.1.6 Undervote. An undervote occurs when the voter does not vote for a candidate, question, or issue, or when more than one person in a race is available, the voter does not vote for the maximum number of votes allowed.
- 27.1.7 Vote in Optical Scan Ballots. A correctly voted optical scan ballot occurs when a voter, using a readable marker, fills in or connects the minimum number of ovals/arrows per race, question, or issue, not to exceed the maximum allowable votes per race, question or issue, without extending the vote mark beyond the parameters of the instructions.
- 27.1.8 Write-In Vote. A vote on a ballot on which the voter physically writes in the name of a legally qualified write-in candidate in the space reserved on the ballot for write-in votes and properly marks the oval or connects the arrow on optical scan ballots according to the directions provided to the voter.

27.2 Multiple Page Ballots. In any election where a multiple page printed ballot is used, a voter must vote and return all pages of the ballot at the same time. Any voter who has returned at least one page of a multiple page printed ballot will be considered to have voted. Any additional page returned at a later time shall not be counted but shall be appropriately marked, set aside, and preserved as other election materials in accordance with section 1-7-802, C.R.S.

27.3 Uniform Counting Standards for hand-counted Paper Ballots

27.3.1 Judges counting ballots on election day shall take into consideration the intent of the voter.

27.3.2 If a ballot contains markings for more than the maximum votes allowed in a candidate race or for a ballot issue or question, no vote shall count for that race, question, or issue. Judges shall take into consideration any notation by the voter that would clearly indicate the choice of the voter.

27.3.3 If an issue, question or candidate race contains no markings by the voter, no tally will be made for that race, question, or issue, but all other candidate races, issues, or questions properly marked by the voter on the ballot shall be counted.

27.3.4 A ballot which has no markings for any candidate races, issues or questions shall be tallied as a blank ballot, but the voter shall be given credit for voting.

27.3.5 If the intent of the voter is clear on a write-in vote, the write-in vote shall be counted for a legally qualified candidate.

27.4 Uniform Counting Standards for Optical Scan Ballots

27.4.1 Precinct Optical Scan Procedures

- (a) Voters whose ballots are rejected or sorted by the precinct counter as a blank or overvoted ballot shall be given the opportunity to correct their ballot.
- (b) Ballots sorted to a write-in bin shall be tallied at the conclusion of the voting and delivered to the central counting center in a secure container.

27.4.2 Central Count Optical Scan Procedures

- (a) A resolution board, consisting of a team(s) of one (1) Republican and one (1) Democrat for partisan elections or two (2) qualified election judges for nonpartisan elections, shall resolve all ballots sorted by the central count optical scan equipment.
 - (1) The board shall be observed by two (2) witnesses, who in any partisan election shall be representatives of each major political party, who may not handle or process ballots.
 - (2) All persons engaged in the counting and processing of ballots shall be deputized or take an oath to faithfully perform their duties.
 - (3) The resolution board shall maintain a log for each step of verification, duplication, and counting.
- (b) Sequence of Resolution Procedures

- (1) A zero tape shall be run indicating no votes cast or counted before the counting begins.
- (2) Official ballots shall be processed through the optical scanner, with sorted overvotes, blank ballots, and write-in ballots viewed and resolved by the resolution board. Only ballots sorted by the machine shall be subject to review by the resolution board. If there are no legally qualified write-in candidates, the write-in sort option shall not be utilized. The number of each duplicated ballot shall be entered on the resolution board log sheet.
- (3) All ballots which are sorted by the optical scanner and resolved by the resolution board by duplication are to be indicated as such and kept separate from the standard run ballots for the precinct.
- (4) The precinct judge's ballot reconciliation form is compared to the number of scanned ballots for the precinct.
- (5) After the final precinct has been tallied, the total write-in votes shall be indicated on the final summary along with the seal numbers for each sealed box of scanned ballots.

(c) Resolution of optical scan ballots

- (1) Damaged or defective ballots shall be duplicated utilizing the ballot duplication procedures as provided in Rule 27.4.2(c)(5).
- (2) Blank ballots shall be examined by the resolution board to determine if the ballot is a true blank ballot or one that has been marked with a non-detectable mark. Resolution board members must make a duplicate copy of the ballot which has been marked with a non-detectable mark utilizing the ballot duplication procedures as set forth in Rule 27.4.2(c)(5). If a ballot is truly blank it shall be sent back for the resolution pass through the scanner, and the ballot tabulated with no races, issues or questions voted.
- (3) Overvoted ballots shall be inspected by the resolution board. Ballots that reflect marks that are clearly identified as unintentional but register an overvote on the scanner must be duplicated by the resolution board utilizing the procedures for duplication of ballots. If more marks are completed in a race, question, or issue than what is allowed for that race, question, or issue the duplication board can only duplicate if there is a notation by the voter that would clearly indicate the choice of the voter.
- (4) Write-in votes sorted by the optical scan equipment on election day shall be delivered to the assigned write-in board for hand counting. In order to be counted, the oval must be darkened or the arrow connected according to the appropriate voting instructions. Only votes for legally qualified write-in candidates shall be counted. When a race with a valid write-in is overvoted and the duplication board finds that a mark has been made for a valid candidate and the voter also wrote in the name of the same candidate on the write-in line and made a mark, the duplication board shall duplicate the ballot by making a mark by the name of the candidate printed on the ballot.

- (5) The resolution board shall duplicate ballots by clearly labeling the new duplicate ballot as a "DUPLICATE" and assign a serial number which shall be recorded on both the original and duplicate ballot. For example, the first ballot in Precinct # 1 to be duplicated could be labeled as #1/001 with the duplicate labeled D#1/001. Original ballots shall be separated from the duplicate ballots and placed in an envelope clearly marked "ORIGINAL BALLOTS." The duplicate ballots shall be counted in lieu of the original ballots.
 - (6) The resolution board shall maintain an official audit log setting forth the precinct number, duplicate ballot number, reason (with specificity) that the ballot was duplicated, date of duplication, and the initials of the members of the duplication board responsible for duplicating the ballot.
- (d) Recount Procedures for Optical Scan
- (1) Optical scan equipment must be set to consistent sensitivity standards for each system type, must be tested prior to the recount, and shall be programmed to sort undervotes for the individual race(s), issue(s) or question(s) being recounted.
 - (2) Recounts will include a visual inspection of all ballots cast for write-in candidates in the contested race(s) to determine voter intent.

27.5 Duplication of Ballots.

- (a) Using the damaged ballot as the guide, a blank ballot shall be marked by a duplicating team, so that the votes recorded are identical to those indicated on the damaged ballot, and shall be proofed to insure that is marked properly and accurately.
- (b) A unique number shall be assigned to both the original and duplicated ballot. This will reference the two ballots together and provide an audit trail. (Example: the ballots may be marked XX-NNN, where XX is the precinct number and NNN are consecutive numbers starting with the number one.)
- (c) The duplicate ballot shall be placed with all other ballots to be counted.
- (d) The damaged or unreadable original ballot shall be marked "DUPLICATED" to indicate that the ballot has been duplicated and the duplication is completed. All duplicated original ballots for a precinct along with any applicable printed material shall be placed in an envelope and clearly marked "BALLOTS THAT HAVE BEEN DUPLICATED."

Rule 28. Rules Concerning Election Judges

- 28.1 For purposes of training election judges, an "election cycle" shall mean all elections held during a calendar year beginning with January 1 and ending December 31.
- 28.2 In lieu of the oath for other election judges prescribed in section 1-6-114, C.R.S., each person appointed to serve as a student election judge shall take a self-affirming oath or affirmation before beginning their duties as a student election judge, in substantially the following form:

"I, _____ do solemnly swear (or affirm) that I am a citizen of the United States and state of Colorado; that I am at least 16 years of age and a High School Junior or Senior; that I will

perform the duties of an election judge according to law and to the best of my ability; that I will studiously strive to prevent fraud, deceit, and abuse in conducting the same; that I will not try to determine how any elector voted, nor will I disclose how any elector voted if in the discharge of my duties as a student election judge such knowledge shall come to me, unless called upon to disclose the same before some court of justice; that I have never been convicted of election fraud, any other election offense, or fraud and that, if any ballots are counted before the polls close on the date of the election, I will not disclose the result of the votes until after the polls have closed and the results are formally announced by the designated election official.”

Rule 29. Rules Concerning Procedures for the Verification of Signatures

29.1 Missing Signature on Mail Ballot, Provisional Ballot or Mail-in Ballot Envelope

29.1.1 When the election judge reviews the mail ballot return envelope pursuant to section 1-7.5-107.3, C.R.S., or mail-in ballot return envelope pursuant to section 1-8-114.5, C.R.S., or the provisional ballot return envelope pursuant to section 1-8.5-105(3)(a), C.R.S., and notices that the envelope lacks a signature, the election judge shall contact the eligible elector in writing no later than two calendar days after election day. A copy of the written notification shall be kept in an official file, which shall become part of the official election record. Nothing in this rule shall be construed to prohibit the designated election official from calling the elector; however, a phone call shall not substitute for notification to the elector in writing.

29.1.2 The letter shall inform the eligible elector that they must come to the office of the county clerk and recorder to sign the mail ballot, provisional ballot, or mail-in ballot envelope no later than eight (8) calendar days after election day.

29.1.3 The letter sent by the election official shall not constitute a violation of section 1-13-801, C.R.S.

29.1.4 The form shall include the following language:

“Any person who knowingly violates any of the provisions of the election code relative to the casting of ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Section 1-13-803, C.R.S.

29.2 In accordance with section 1-8-114.5, C.R.S., for mail-in ballots and section 1-7.5-107.3, C.R.S., for mail ballots, the election judges shall compare the signature on the self-affirmation on each respective “Return Envelope” with the signature on file with the county clerk and recorder or election official. Signatures shall require further research if any of the following discrepancies are discovered:

Code 1 – An obvious change in the slant of the signature

Code 2 – A printed signature on one document and a cursive signature on the other document

Code 3 – Differences in the size or scale of the signature

Code 4 – Differences in the individual characteristics of the signatures, such as how the “t’s” are crossed, “l’s” are dotted, loops are made on “Y’s” or “J’s”

Code 5 – Differences in the voter’s signature style, such as how the letters are connected at the top and bottom

Code 6 – Ballots or envelopes from the same household have been switched

Code 7 – ‘Other,’ including misspelled names & description of discrepancy

29.3 If further research is necessary, the election judge shall check the county clerk’s or election official’s file for at least two additional documents signed by the voter, if available. Additional information, written by the voter on the “Return Envelope”, such as the voter’s address and date of signing may be compared for similarities. Any similarities noted when comparing this other information may be used as part of the signature verification decision process.

29.3.1 If it appears to the judges verifying the self-affirmation on the return envelopes that members of the same household who have applied for mail-in ballots or have been sent mail ballots have inadvertently switched envelopes or ballots, the ballot or ballots shall be counted and no letter of advisement to the elector is necessary.

29.4 Whenever a signature is disputed, the election judge shall document the discrepancy by completing a log. The log shall provide a record of the research steps taken to resolve the issue. The log will identify the voter using a unique tracking number. This tracking number shall not contain the voter’s social security number; Colorado issued driver’s license number, or the identification number issued by the Department of Revenue.

29.5 The log shall be approved by the Secretary of State pursuant to section 1-1-109, C.R.S.

29.6 There shall be no document containing the voter’s signature attached to the research log.

29.7 If both sets of election judges agree that the signatures do not match, the county clerk and recorder shall within two days after the election, send a letter to the eligible elector at the address indicated in the registration records and the address where the mail-in ballot or mail ballot was mailed explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector returned a ballot to the county clerk and recorder. (Sections 1-7.5-107.3(2)(a) and 1-8-114.5(2)(a), C.R.S.) The voted ballot itself should not under any circumstances be returned with this letter.

29.8 The form of the letter as well as the form sent to the elector shall be approved by the Secretary of State pursuant to section 1-1-109, C.R.S.

29.9 The letter sent by the election official shall not constitute a violation of section 1-13-801 C.R.S.

29.10 The final signature verification resolution and ballot disposition shall be noted on the research log.

29.11 Any uncounted ballot shall remain sealed in the return envelope and stored under seal with all other uncounted ballots as part of the election record pursuant to section 1-7-802, C.R.S., and may be removed only under the authority of a district attorney or by order of a court having jurisdiction.

Rule 30. Rules Concerning Voter Identification

30.1 Definitions

- 30.1.1 "Registration in person" means any registration personally completed by the voter at any clerk's main or branch office or personally delivered by the voter to any clerk's main or branch office, driver's license office, or other voter registration agency.
- 30.1.2 "Mail Registration" or "Registration by mail" includes any registration not personally delivered by the voter to any clerk's main or branch office, voter registration agency, driver's license office, or other human services agency. These registrations include, but are not limited to, postmarked registration forms and voter registration drives.
- 30.1.3 As referenced in these rules, "tagging a voter" for ID before voting means identifying a voter in the voter registration database as one who registered by mail and did not supply required identification. Tagged voters require a copy of the required identification to be enclosed with a mail-in or mail ballot.
- 30.1.4 A tagged voter may present the required voter ID or a number which is subsequently verified to the county clerk and recorder at any time prior to returning a voted mail or mail-in ballot to satisfy the provisions of Rule 30.1.3.
- 30.1.5 "SSN" as used in these rules shall mean either the entire Social Security Number or the last four (4) digits of the Social Security Number.
- 30.1.6 "ID" as used in these rules shall mean identification as defined in compliance with section 1-1-104(19.5), C.R.S., as a copy of one of the following:
- A valid Colorado driver's license;
 - A valid identification card issued by the Department of Revenue in accordance with the requirements of Part 3 of Article 2 of Title 42, C.R.S.;
 - A valid U.S. passport;
 - A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;
 - A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;
 - A valid U.S. military identification card with a photograph of the eligible elector;
 - A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. (A cable bill, a telephone bill, documentation from a public institution of higher education in Colorado containing at least the name, date of birth, and legal residence address of the student elector, a paycheck from a government institution, or a Certificate of Degree of Indian or Alaskan Native Blood are sufficient forms of identification);
 - A valid Medicare or Medicaid card issued by the United States Health Care Financing Administration;
 - A certified copy of a U.S. birth certificate for the elector issued in the United States

- Certified documentation of naturalization; or
- A valid student identification card with a photograph of the eligible elector issued by an institute of higher education in Colorado, as defined in section 23-3.1-102(5), C.R.S.

30.1.7 As used in section 1-1-104(19.5)(a)(VII) “current” refers to current utility bill, current bank statement, and current government check, paycheck, or other government document that shows the name and address of the elector. Current means that the date of the document is within 60 days of the date submitted for identification purposes unless the document states a longer billing cycle.

30.2 Voter registration in person.

30.2.1 Registering in Person. The elector must provide:

- A valid Colorado Driver’s License number;
- if the voter does not have a valid Colorado Driver’s License, the voter shall provide the number of the voter’s current and valid identification card issued by the Colorado Department of Revenue.
- If the voter has not been issued a valid Colorado Driver’s License or ID card issued by the Department of Revenue, then the voter shall provide at least the four last digits of the voter’s social security number.

Authority: Section 1-2-204(2)(f.5), C.R.S.

30.2.2 A voter is not required to show or present his current and valid Colorado driver’s license or ID. It is sufficient for the voter to provide the number.

30.2.3 If an applicant for voter registration has not been issued a current and valid Colorado driver’s license or a current and valid identification card issued by the Department of Revenue or a social security number, the election official shall nevertheless register the voter. The applicant shall be assigned a unique identification number that will serve to identify the applicant for voter registration purposes. Section 1-2-204 (2.5), C.R.S.

30.3 Voter Registration by Mail

30.3.1 Registering by Mail. (Including Voter Registration Drives).

- (a) The voter must provide one of the following identification numbers:
- (b) The person’s Colorado Driver’s License number or ID number issued by the Department of Revenue; if the voter does not have a current and valid Colorado Driver’s License or ID card issued by the Department of Revenue, the voter shall provide the last four digits of the voter’s social security number.
- (c) If a voter has not been issued a Colorado Driver’s License number, ID card issued by the Department of Revenue or a Social Security card, the voter must provide a copy of one of the forms of identification listed in 30.1.6.

Authority: Sections 1-2-501(2)(a), C.R.S. and 1-1-104(19.5), C.R.S.

30.3.2 Prior to the implementation of the statewide voter registration database, For any voter

registration application received by mail that does not have enclosed a copy of the Colorado Driver's License number, number of an identification card issued by the Department of Revenue, or Social Security number listed, the ID number shall be verified against the Department of Motor Vehicle Motor/Voter Database and the Secretary of State voter registration database. When access to the Social Security database becomes available, that database shall also be utilized. If a number cannot be verified and the voter failed to supply one of the forms of ID listed in 30.1.6, the voter's record will be tagged. (Upon creation of the statewide voter registration system, the check will be performed automatically.)

30.3.3 If, for a registration by mail, a copy of an ID is enclosed per section 1-1-104(19.5), C.R.S., no further verification against the Department of Motor Vehicle Motor/Voter Database, the Secretary of State voter registration database or the Social Security database is required. The voter shall not be tagged and shall be allowed to vote by mail or mail-in ballot without submitting additional identification requirements.

30.3.4 Subject to Rule 30.5.1, if the identification number supplied does not match the identification number on the database record for the name and date of birth, the registration by mail shall not be considered verified. However, if the voter has made a minor error, the Clerk and Recorder may use good judgment and correct the error, and consider the voter verified. Minor errors include, but are not limited to, a transposition of two numbers, or accidentally adding or omitting a number.

30.4 Verification of Identification:

30.4.1 Verification shall include a match of name, date of birth and ID number on an existing state identification record. A match of only one or two of these items shall not be considered verification. During verification, names given which are similar common variants or nicknames of the name shall be acceptable.

30.5 Tagging a voter:

30.5.1 Only a voter who has registered by mail may be tagged; a person who registers in person shall not be tagged.

30.5.2 A voter who registers by mail and provides a copy of an acceptable ID as provided in section 1-1-104(19.5), C.R.S., shall not be tagged. A social security card is not listed as ID in section 1-1-104(19.5), C.R.S.

30.5.3 If a voter registers by mail and supplies a Colorado Driver's License number or Colorado Department of Revenue ID number (but not a copy) and/or the social security number, and if at least one of the numbers can be verified with an existing state identification record bearing the same number, name and date of birth, the voter shall not be tagged.

30.5.4 A voter, who registers by mail and does not supply a copy of an acceptable ID as provided in 1-1-104(19.5), C.R.S., and does not list his/her driver's license number, Colorado Department of Revenue ID number or social security number, shall not be registered.

30.5.5 If a voter registers by mail and supplies either a Colorado Driver's License number or Colorado Department of Revenue ID Number (but not a copy) and/or social security number, but no number can be verified with an existing state identification record bearing the same number, name and date of birth against the Driver's License database, Secretary of State voter database or Social Security database once access

to the Social Security database becomes available, the voter shall be tagged.

- 30.5.6 The tag status for a voter shall be removed if the voter votes in person showing an acceptable ID or votes by mail or and encloses a valid ID.
 - 30.5.7 If the identification number supplied is discovered as incorrect upon verification, and the county clerk and recorder discovers the correct number, the clerk and recorder may enter the correct number on the voter's permanent voter registration record, but the voter shall be tagged.
- 30.6 If a voter registering by mail does not provide a Colorado Driver's License number, Colorado identification card number or the last four digits of the voter's social security number on the voter registration application, and the county clerk and recorder discovers such identification number, the clerk and recorder may enter the applicable identification number on the voter's permanent voter registration record. Any number entered on the voter's permanent voter registration record by the clerk and recorder does not remove the tag status of a voter. Such voter is still required to provide valid identification prior to voting in person, by mail ballot or by mail-in ballot.
- 30.7 Addresses on identification
- 30.7.1 Some forms of identification may not contain an address. If the address appears on the identification, the address must be in Colorado. If ID presented lists only a box number or Post Office box number instead of a residence address, the registrar shall accept the voter's affirmation, as long as the city is in Colorado.
 - 30.7.2 Utility bills, bank statements, government checks, government paychecks or other government documents must show the name of the voter and Colorado address.
- 30.8 A suspended license is considered current and valid. A revoked or expired license is not considered current and valid and is not acceptable.
- 30.9 The Colorado Driver's License or Department of Revenue issued ID referred to in section 1-2-217.5(1)(b), C.R.S., or elsewhere in statute, where not specifically stated, must be current and valid.
- 30.10 Pursuant to section 1-1-104(19.5)(a), C.R.S., if an ID that requires a photograph does not contain a photograph, it is not an acceptable ID for registration by mail or voting purposes.
- 30.11 Identification for Voting in Person
- 30.11.1 Voting in Person. (Including early voting, polling place voting).
 - (a) The acceptable forms of ID for voting in person are listed in Rule 30.1.6
 - (b) A Social Security Number (or last four digits) is NOT a legal form of ID for voting in person.
- Authority: Sections 1-7-201 and 1-1-104(19.5), C.R.S.
- 30.11.2 When the voter shows ID pursuant to section 1-1-104(19.5), C.R.S., the election judge shall check to ensure that the name matches, and that the address, if one is listed, is in the State of Colorado. During verification, names given which are similar common variants or nicknames of the name shall be acceptable.
- 30.12 Identification for Voting by Mail

30.12.1 Voting By Mail (Including Mail-in Ballot)

- (a) The acceptable forms of ID for voting by mail for first time voters are listed in Rule 30.1.6.
 - (b) A Social Security Number (or last four digits) is NOT a legal form of ID for voting by mail.
- 30.13 Identification presented by the voter when registering to vote by mail, or presented by the voter when returning the voted mail ballot or mail-in ballot, is not required to be scanned or imaged into the permanent voter registration database, but shall be retained by the designated election official for a period of 25 months after the date of the election.
- 30.14 If a voter has been directed to return identification with his or her voted ballot, the election judge shall open the returned envelope to retrieve the required information. If the required information cannot be found in the return envelope, the election judge shall open the secrecy envelope/sleeve to find the required identification in an effort to not disenfranchise the voter.
- 30.15 If a tagged voter requests a mail-in ballot, the local election official shall send such ballot with written instructions advising the voter of the requisite forms of identification needed to be provided with the mail-in ballot. The local election official shall send the mail-in ballot by the deadline set forth in section 1-8-104(3), C.R.S. If a mail-in ballot is returned without ID as defined in Rule 30.1.6, then the ballot shall be treated as a provisional ballot and verified pursuant to Rule 26.4.

Rule 31. Rules Concerning Help America Vote Act, Title III: Administrative Complaint Procedures

- 31.1 The HAVA Title III complaints may be received by the Secretary of State's office or the designated election official's office. The HAVA Complaint procedure shall be uniform and nondiscriminatory. The Complaint procedure shall conform to section 1-1.5-105(2)(a), C.R.S., as follows:
- (a) A uniform and nondiscriminatory complaint procedure;
 - (b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a complaint;
 - (c) A description by the complainant in his or her complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;
 - (d) A requirement that the complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later;
 - (e) A requirement that each complaint be in writing and notarized, signed, and sworn by the person filing the complaint;
 - (f) Authorization for the secretary to consolidate two or more complaints;
 - (g) At the request of the complainant, a hearing on the record;
 - (h) Authorization for the secretary to provide an appropriate remedy if the secretary determines

that any provision of title III of HAVA has been violated or to dismiss the complaint and publish the results of his or her review if the secretary determines that no provision of title III of HAVA has been violated.

- (i) A final determination on the complaint by the secretary prior to the expiration of the ninety-day period that begins on the date the complaint is filed, unless the complainant consents to an extension of time for making such determination;
 - (j) Resolution of the complaint within sixty days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the requirements of this rule if the secretary fails to satisfy the applicable deadline specified in section 1-1.5-105(2)(i), C.R.S., and the availability of the record and any other materials from any proceedings conducted under the complaint procedures established for use under such alternative dispute resolution procedures;
 - (k) Authorization for the secretary to conduct a preliminary review of any complaint submitted to him or her and to dismiss any complaint that he or she finds is not supported by credible evidence; and
 - (l) Recovery by the secretary of the costs of the proceeding against any complainant who files a complaint that, in connection with the final determination by the secretary pursuant to section 1-1.5-105(2)(i), is found on the basis of clear and convincing evidence to be frivolous, groundless, or vexatious.
- 31.2 The complaint must be in writing and may be submitted on a form designated by the Secretary of State or in a letter written by the complainant. The letter shall contain the following:
- (a) The complainant's name;
 - (b) The complainant's full residence address, including county, and mailing address (if different from residence);
 - (c) A description of the alleged violation with particularity and a reference to the section of Title III of HAVA alleged to have been violated;
 - (d) A completed, notarized oath signed by the complainant where he or she states that the facts of the complaint are true and correct to the best of his or her knowledge and belief.
- 31.3 Whenever possible, any completed complaints mailed to the Secretary of State or the designated election official shall be sent in a unique, distinguishable envelope as approved by the Secretary of State. This unique envelope shall be given to the complainant at the same time as the complaint form and instructions.
- 31.4 Upon receipt of the HAVA complaint, the Secretary of State or designated election official shall note the date received and unique tracking number on the complaint form. The Secretary of State's office shall establish a unique tracking number for its use, and the designated election official shall use the Secretary of State's county ID number for that county, the last two digits of the present year, and a sequence number according to the amount of complaints already received by the county, placing hyphens between groupings of numbers. (For example, the first one received would be the two digit county number-last two digits of the year-03 with 01, 02, 03, etc. numbering any sequential complaints).
- 31.5 If the complaint is received by the Secretary of State's office, the unique tracking number shall be added to the form and the form shall be faxed to the designated election official in the county where the alleged violation occurred. The complainant shall receive a copy of the submitted

complaint with all check-in notations and tracking numbers included.

- 31.6 If the complaint is received by the designated election official, the county tracking number shall be added to the form and the form shall be faxed to the Secretary of State's office within one business day. The complainant shall receive a copy of the submitted complaint with all check-in notations and tracking numbers included. The original complaint form shall be hand delivered or mailed to the Secretary of State's office, and a copy shall be retained by the designated election official.
- 31.7 Any original mailed complaints sent by the designated election official and received by the Secretary of State's office shall be sent in a unique, distinguishable mailing envelope as approved by the Secretary of State. This unique envelope will ensure that the complaint is easily recognizable and will be processed in a timely manner.
- 31.8 If the complaint is received by the designated election official and the original sent to the Secretary of State's office, the Secretary of State's office shall notify the designated election official, either by fax or letter, of the office's unique tracking number when the form is received at the Secretary of State's office. This official notification may be used for documentation purposes.
- 31.9 The designated election official shall not make any determination as to the validity of the alleged complaint during the submission process, but shall forward all information to the Secretary of State's office. The county may, however, begin researching the alleged violation on the local level once the complaint is received.
- 31.10 Any information gathered by the designated election official shall be documented with specific details, including the date, and shall be used for reference purposes.

Rule 32. Rules Concerning Recall

- 32.1 In any recall election of a partisan office, the successor nominee's party affiliation shall be listed with his or her name on the ballot.
- 32.2 Signature requirements
 - 32.2.1 For petitions to recall school district directors the petition must be signed by the eligible electors of the director's district equal in number to at least 40% of the ballots cast in the district in the last preceding election at which the director to be recalled was elected as indicated by the pollbook or abstract for the election. See section 1-12-105, C.R.S.
 - 32.2.2 When determining the number of required valid signatures for an elected office for which electors were allowed to vote for more than one candidate in a single race, the signature requirements shall be based on the number of ballots cast for that race as indicated by the pollbook or abstract for the election.
- 32.2 Petition sufficiency occurs when upon review, it is established that the petition contains the required number of valid signatures.
- 32.3 When a protest is filed, petition sufficiency is sustained upon conclusion of the protest when the designated election official or the district judge maintains that there are sufficient valid signatures.
- 32.4 When an officer subject to being recalled resigns within the five days after the sufficiency of the recall petition has been sustained, the recall election does not go forward, and the position is declared vacant and filled according to statute.

Rule 33. Rules Concerning Voters Who Vote After the Polls Close Pursuant to a Court Order

33.1 Any individual who votes in an election for federal office as a result of a federal or state court order or any other order that is in effect 10 days before that election and which extends the time established for closing the polls by state law may only vote in that election by casting a provisional ballot pursuant to state law and the rules and regulations prescribed by the Secretary of State.

33.1.1 Any such provisional ballot cast under this rule shall be separated and held apart from other provisional ballots cast by those voters not affected by the court order.

Rule 34. Rules Concerning the Adoption of Accessible Voting Systems under The Help America Vote Act of 2002.

34.1 The requirements of §301(a)(3) of The Help America Vote Act of 2002 ("HAVA") to implement voting systems that: (1) are accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters and (2) provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a) are triggered when a political subdivision acquires a new voting system by lease or purchase using HAVA §301(a)(3) funds after January 1, 2003.

34.2 No political subdivision shall purchase or lease direct recording electronic (DRE) voting systems or other voting systems equipped for individuals with disabilities at each polling place unless such voting system(s) are fully certified pursuant to standards and guidelines recommended by the National Institute of Standards and Testing (NIST) and adopted by the U.S. Election Assistance Commission (EAC).

34.3 The Secretary of State, as custodian of §301(a)(3) of HAVA funds, will not distribute such funds to any political subdivision to pay for accessible voting systems that have not been fully certified by the EAC and the Secretary of State.

34.4 Only the acquisition of a new voting system (or substantial modification of an existing voting system) that will change voters' interaction with the ballot at the polling sites triggers §301(a)(3) of HAVA.

34.5 If a political subdivision acquires a new voting system, the system must be accessible to persons with physical, cultural/educational, mental/cognitive disabilities and provide the voter in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

34.6 The Help America Vote Act requires that a newly acquired voting system be placed in every early voting and Election Day polling site by January 1, 2006.

Rule 35. Rules Concerning Requirements for Voting System Accessibility

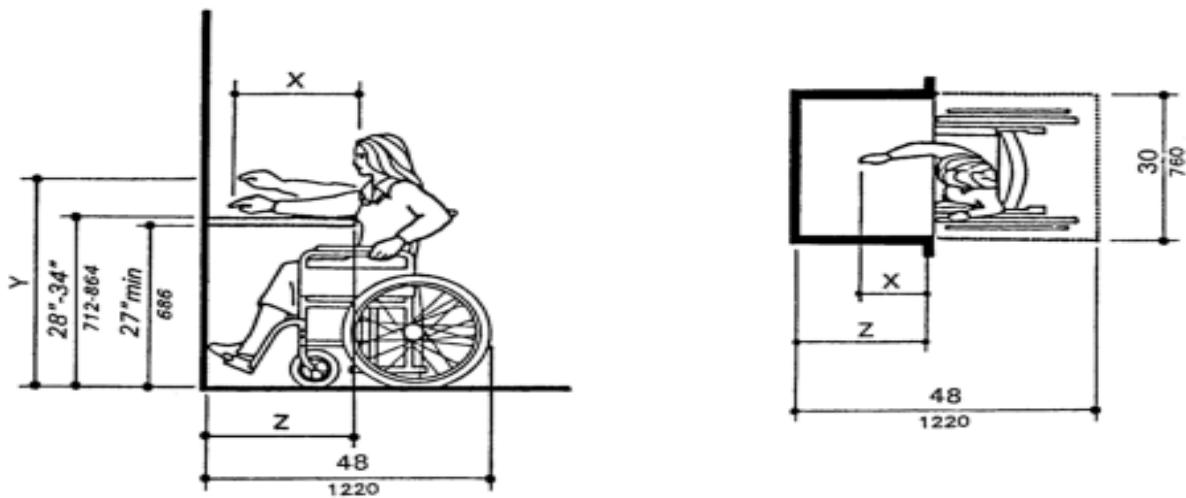
35.1 A voting system shall be accessible to voters with physical disabilities including no vision, low vision (visual acuity between 20/70 and 20/200, and/or 30 degree or greater visual-field loss), no

hearing, low hearing, limited manual dexterity, limited reach, limited strength, no mobility, low mobility, or any combination of the foregoing by providing voters with physical disabilities with a practical and effective means to cast an independent and secret ballot in accordance with each of the following, assessed independently and collectively:

- 35.1.1 The voting system shall provide a tactile-input or speech-input device, or both; and
- 35.1.2 The voting system shall provide a method by which voters can confirm any tactile or audio input by having the capability of audio output using synthetic or recorded human speech, which is reasonably phonetically accurate; and
- 35.1.3 The voting system shall provide a means for a voter to change the voter's selection prior to the voter casting the ballot; and
- 35.1.4 Any operable controls on the input device that are needed for voters without vision shall be discernable tactilely without actuating the keys. As a result, all the buttons on the device do not have to be discernable tactilely, only those buttons that are actually required for the individual to use the "operation without vision" mode; and
- 35.1.5 Any audio and non-audio access approaches shall be able to work both separately and simultaneously; and
- 35.1.6 If a non-audio access approach is provided, the system shall not require color perception; the system shall use black text or graphics, or both, on white background or white text or graphics, or both, on black background, unless the office of the Secretary of State approves other high-contrast color combinations that do not require color perception; and
- 35.1.7 Any voting system that requires any visual perception shall offer the election official who programs the system, prior to its being sent to the polling place, the capability to set the font size to a level that can be read by voters with low vision. While there is no standard font size for this situation, a san-serif font of 18 points as printed on a standard 8.5" x 11" piece of paper will allow the most universal access; and
- 35.1.8 The voting system shall provide audio information, including any audio output using synthetic or recorded human speech or any auditory feedback tones that are important for the use of the audio approach, through at least one mode (e.g., by handset or headset) in enhanced auditory fashion (i.e., increased amplification), and shall provide incremental volume control with output amplification up to a level of at least 97 decibels Sound Pressure Level ("dB SPL"), with at least one intermediate step of 89 dB SPL; and
- 35.1.9 For transmitted voice signals, the voting system shall provide a gain adjustable up to a minimum of 20 decibels ("dB") with at least one intermediate step of 12 dB of gain; and
- 35.1.10 For the safety of others, if the voting system has the possibility of exceeding 120 dB SPL, then a mechanism shall be included to reset the volume automatically to a safe level after every use (e.g., when handset is replaced) but not before; and
- 35.1.11 If sound cues and audible information, such as "beeps" are used, there shall be simultaneous corresponding visual cues and information; and
- 35.1.12 If a non-audio approach is used in conjunction with an audio counterpart, any spoken text shall also be presented on screen. A graphic representation of a ballot with a check, "X," etc. beside a candidate or proposition is allowed; and

- 35.1.13 All controls and operable mechanisms shall be operable with one hand, including with a closed fist, and operable without tight grasping, pinching, or twisting of the wrist; and
- 35.1.14 The force required to operate or activate the controls shall be no greater than 5 pounds per square foot ("lb./sq.ft."); and
- 35.1.15 If a forward approach by a person in a wheelchair to a voting system is necessary, the maximum high-forward reach allowed shall be 48 inches (1220 mm) and the minimum low-forward reach shall be 15 inches (380 mm). If the high-forward reach is over an obstruction, reach and clearances shall be as shown in the Figure 1., or otherwise in accordance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"), as written at the time the system is certified for use in the state of Colorado; and

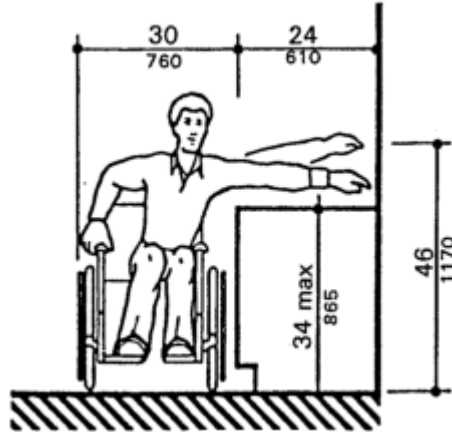
Figure 1.



NOTE: x shall be ≤ 25 in(635 mm); z shall be $\geq x$. When x < 20 in(510 mm), then y shall be 48 in(1220 mm) maximum. When x is 20 to 25 in(510 to 635 mm), then y shall be 44 in(1120 mm) maximum.

- 35.1.16 If a side or parallel approach by a person in a wheelchair to a voting system is necessary, the maximum side reach allowed shall be 54 inches (1370 mm) and the low side reach shall be no less than 9 inches (230 mm) above the floor. If the side reach is over an obstruction, reach and clearances shall be as shown in the Figure 2., or otherwise in accordance with the ADAAG, as written at the time the system is certified for use in the state of Colorado; and

Figure 2.



35.1.17 The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges outlined in paragraphs (15) and (16) of this subsection.

Rule 36. Rules Concerning Notice of Voting System Malfunction Required; Submission of Explanatory Report by Vendor Required Upon Request of Secretary of State

- 36.1 A vendor (or the political subdivision, if no private vendor supports their system) must give notice to the Secretary of State within 24 hours of a malfunction of its voting/election system (including, but not limited to, software, firmware, hardware, or other equipment) in preparation for and on an election held in this state. The notice may be verbal, but must also be in writing.
- 36.2 Following the notice, the Secretary of State shall determine whether further information on the malfunction is required. At the request of the Secretary of State, a vendor (or the political subdivision, if no private vendor supports their system) must submit a report to the Secretary of State's office detailing the reprogramming (or any other actions) necessary to correct a voting system malfunction in preparation for and on an election held using the vendor's system. The report shall address whether permanent changes are necessary to prevent similar malfunctions in the future. If the malfunction requires a programming or election setup change to the database or other parts of the voting system, the designated election official shall submit an updated electronic copy of the election system database to the Secretary of State's office as set forth in Rule 11.
- 36.3 The report shall be submitted within 30 days after the date of the request by the Secretary of State. Notwithstanding the foregoing, if an election is scheduled within 60 days of the date of request by the Secretary of State, the Secretary of State may set an emergency deadline for filing the report. The request may be verbal, but must also be in writing.
- 36.4 Failure to submit a report within the required period shall be grounds to decertify the system.
- 36.5 The political subdivision holding the election in which the voting system malfunction occurred may submit the report in lieu of a report from the system's vendor.
- 36.6 A copy of this report will be attached to the system's most recent certification on file in the Secretary of State's office.
- 36.7 The Secretary of State's office will distribute a copy of this report to all counties using the voting

system in question.

Rule 37. The Acquisition, Purchase or Lease of Voting Systems.

37.1 Declaration of Intent.

37.1.1 The federal Help America Vote Act of 2002 (“HAVA”) established uniform voting systems standards used in elections. The following rules seek to conform Colorado requirements to federal HAVA requirements pertaining to voting systems.

37.1.2 Voting systems (including optical scanning voting systems or direct recording electronic systems) certified by the secretary of state and acquired, purchased or leased by counties pursuant to state law shall:

- (a) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;
- (b) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
- (c) if the voter selects votes for more than one candidate for a single office:
 - (i) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot;
 - (ii) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and
 - (iii) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.
- (d) Ensure that any notification required under this paragraph preserves the privacy of the vote and the confidentiality of the ballot.

37.1.3 Counties of the State of Colorado that use a paper ballot voting system or a central count voting system (including mail-in ballots and mail ballots), may meet the requirements of this rule by:

- (a) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and
- (b) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any errors).

37.1.4 The voting systems described in the foregoing paragraphs shall produce a record with an audit capacity for such system.

- (a) The voting system shall produce a permanent paper record with a manual audit

capacity for such system.

- (b) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.
- (c) The paper record produced under subparagraph (a) shall be available as an official record for any recount conducted with respect to any election in which the system is used.
- (d) The paper record shall be accessible for individuals with disabilities including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

37.1.5 The voting system shall:

- (a) be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;
- (b) satisfy the requirements of paragraph 37.1.5(a) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and
- (c) be installed in each polling place in the state by the first federal election held after January 1, 2006.

37.1.6 The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965.

37.2 Prohibition of lease, purchase, or acquisition of voting systems pending action by the Election Assistance Commission (EAC) and certification through the Secretary of State..

37.2.1 No voting system may be leased, purchased, or acquired by any county or political subdivision of this state until the EAC and the Secretary of State have promulgated voting systems standards that address these concerns. This rule shall not apply to voting systems that have been certified by the Secretary of State and purchased by the political subdivisions pursuant to state law prior to the effective date of this rule.

37.3 Adoption of April 30, 2002 Voting Systems Standards promulgated by the Federal Election Commission for voting systems.

37.3.1 The Secretary of State hereby adopts the April 30, 2002 Voting Systems Standards promulgated by the Federal Election Commission for voting systems. Therefore, all voting systems, including, but not limited to, optical scan voting systems, direct record electronic voting systems, and touch screens, purchased by the political subdivisions of the State of Colorado are required to meet the qualifications of the Voting Systems Standards promulgated by the Federal Election Commission on April 30, 2002 and be certified by an independent testing authority certified by the National Association of Election Directors until such time, and subsequently thereto, at each time, as the Election Assistance Commission promulgates new Voting Systems Standards.

37.3.2 Upon any revision or new release of Voting Systems Standards by the Election Assistance Commission, the Secretary of State hereby automatically adopts such standards as may be promulgated, and any vendor seeking state certification shall

follow such adopted voting systems standards and the processes mandated by state law in order to be certified by the Secretary of State.

- 37.4 The Secretary of State requires all voting systems and all individual parts of voting systems to pass certification criteria as outlined in the State of Colorado Voting Systems Certification Program. The designated election official shall retain records of all certification procedures pertaining to voting systems and parts of voting systems.

Rule 38. Minimum Security Procedures for Transmission of Election Records by Secure, Dedicated Teleprocessing Lines Employed by Vote Centers. See section 1-5-102.7, C.R.S.

38.1 Definitions.

38.1.1 "Vote Center" means a polling place at which any registered elector in the political subdivision holding the election may vote, regardless of the precinct in which the elector resides.

38.1.2 "Teleprocessing Lines" means secure, dedicated communication transmission facilities used for the purpose of transferring Elector Data between Vote Centers and a centralized computerized pollbook maintained by the county clerk and recorder, to ensure the security and integrity of voting information so that no deviation can go undetected.

38.1.3 "Elector Data" means voting information, including but not limited to, voter registration, voting history, and voting tabulations.

38.1.4 "Electronic Pollbook" is a list of eligible electors in electronic format who are permitted to vote at a polling place in an election conducted under the Election Code, which shall be processed by a computer at a Vote Center to be immediately accessible to all other computers at all Vote Centers in the county.

38.2 This Rule applies to each designated election official who transmits election records via Teleprocessing Lines to a centralized Electronic Pollbook maintained by the county clerk and recorder for the purpose of running an election and compiling complete returns.

38.3 The designated election official shall establish written minimum security procedures covering the transference of Vote Center teleprocessing information. Such procedures shall include security covering the transmission of Elector Data processed through the Electronic Pollbook and reconciliation of the registration and history of voters casting ballots at a Vote Center.

38.4 Such procedures shall be submitted in writing to the Secretary of State and received by that Office for approval no later than sixty (60) days before the election date. The Secretary of State shall either approve the procedures submitted or notify the designated election official of recommended changes.

38.5 If the Secretary of State rejects or approves the written procedures, the Secretary of State shall provide written notice of such rejection/approval, including specifics of non-compliance with this Rule, within fifteen (15) days of receiving the written procedures.

38.6 The designated election official shall submit a revised procedure within fifteen (15) days thereafter.

38.7 The Secretary of State shall permit the filing of the revised procedures at a later date if it is

determined that compliance with the fifteen day requirement is impossible.

- 38.8 All reconciliations must be accomplished prior to canvassing board certification of final results and shall be certified by the canvassing board. The certification of reconciliation shall be filed with the Secretary of State at the time the canvassing board certification of official election results is filed.
- 38.9 Where the Elector Data is transmitted via Teleprocessing Lines for the purpose of combining with other such tabulations to produce complete returns, the designated election official shall establish procedures to reconcile received transmitted tabulations so that no deviation can go undetected.
- 38.10 Prior to January 1, 2008, election judges shall make one certificate for each Vote Center in the form required by section 1-7-601, C.R.S.
- 38.11 Certificate of Reconciliation
- (a) In addition to the statutory form required by section 1-7-601, C.R.S., the election judges for each Voter Center shall submit a certification of reconciliation in substantially the following form:
- During the ____ Election held in _____ County on _____ 20____, Elector Data was transmitted using dedicated Teleprocessing Lines. The canvassing board hereby certifies that the reconciliation procedures required by Rule 38.8, Minimum Security Procedures for Transmission of Election Records by Dedicated Teleprocessing Lines in Vote Centers has been complied with.*
- (b) The Certification of Reconciliation must be signed and dated by the designated election official.
- 38.12 After January 1, 2008, reconciliation shall consist of race-by-race comparison by precinct of the received tabulation to a tabulation report produced from the original tabulations sent from the precinct to those received at the Vote Center. All tabulation reconciliations must be accomplished prior to canvassing board certification of final results and shall be certified by the canvassing board. This certification of reconciliation shall be filed with the Secretary of State at the time the canvassing board certification of official election results is filed.

Rule 39. Cancellation of Felons' Voter Registrations

- 39.1 Upon being provided information concerning felony convictions and pursuant to section 1-2-302(3.5)(b), C.R.S., the Secretary of State shall direct the cancellation of the registration of persons convicted of a felony who are serving a sentence of confinement or detention or are on parole.
- 39.1.1 This rule does not pertain to a felon serving a period of probation.
- 39.2 The Secretary of State shall compare the felony conviction data with the Secretary of State's voter registration database to match voter registration information with the individuals listed using the following criteria:
- (1) The last name and first name of each individual,
 - (2) The date of birth,
 - (3) The social security number or last four digits (if provided).

- 39.2.1 Any confirmed match of the last name and first name of the individual and the date of birth, the social security number, or at least the last four digits, will be considered adequate cancellation criteria.
- 39.2.2 The county clerk and recorder shall send written notice to all individuals cancelled pursuant to this rule advising the individual that his or her voter registration has been cancelled. The felon notification of cancellation letter shall be in a format approved by the Secretary of State, and shall be mailed to the last known mailing address as shown on the clerk and recorder's records.
- 39.3 For any confirmed matches of convicted felons found pursuant to Rule 39.2, such matches shall be provided to the county clerk and recorder of the county of residence of the individual as recorded in the Secretary of State voter registration database to be cancelled pursuant to sections 1-2-302(3.5)(b) and 1-2-103(4), C.R.S.
- 39.4 Each county clerk shall solicit a listing of individuals convicted of a felony from the county sheriff of their respective counties.
 - 39.4.1 Such lists shall be obtained at least once a month throughout the year. During any month in which an election occurs, such lists shall be obtained up to and including the day prior to the election.
 - 39.4.2 The registrations of confirmed matches of individuals on the lists furnished by the county sheriffs shall be cancelled under the criteria set forth in Rule 39.2.

Rule 40. Rules Concerning Certification and Education of Designated Election Officials

- 40.1 Purpose:
 - 40.1.1 The Secretary of State Recognizes that the oversight of elections is a profession that requires thorough knowledge of complex state and federal election law and election procedures. It is recognized that state and federal law, voting equipment and election procedures, and therefore necessitates extensive training. The purpose of the certification program is to standardize election procedures and education so that Colorado voters have a greater confidence in their election officials and the election process.
- 40.2 Advisory Board created
 - 40.2.1 The Secretary of State shall create an advisory board to oversee the certification program and curriculum. The advisory board shall meet at least twice each calendar year to approve the curriculum and make necessary changes. The advisory board shall also review evaluations and recommend changes to the certification program.
 - 40.2.2 The advisory board shall review individual applications for certification and shall approve applications that are accurate and complete. The advisory board shall have the authority to take into account special circumstances in reviewing and approving applications.
 - 40.2.3 The advisory board shall include the following members appointed by the Secretary of State:
 - (a) Four county clerks or designated staff members
 - (b) Two Secretary of State Office representatives

- (c) Any individual(s) whom the Secretary of State believes could make a valuable contribution to the Board.

40.2.4 Board members shall be appointed by the Secretary of State to serve a two-year term. Board members may be terminated without cause. Failure to attend meetings or meaningfully contribute may result in termination.

40.3 Core Curriculum

40.3.1 The certification program shall include core requirements. All training outlined herein shall be provided under the direction of the Secretary of State. Persons applying for certification shall complete at least eight core classes. The core classes shall generally include but are not limited to:

- (a) The basic conduct of elections
- (b) Testing and maintenance of voting equipment
- (c) Canvass procedures
- (d) Mail-in voting
- (e) Pollworker training and recruiting
- (f) SCORE training
- (g) Ethics
- (h) Accessibility for people with disabilities
- (i) Provisional Voting

40.3.2 The classes may be offered as a whole or in sections.

40.4 Elective Curriculum

The certification program shall include electives as part of the certification program. All training outlined herein shall be provided under the direction of the Secretary of State. Persons applying for certification shall select and complete at least six (6) elective courses. The elective courses shall generally include but are not limited to:

- (a) Voter Outreach
- (b) Media Relations
- (c) Elections refresher course
- (d) Petitions
- (e) Overseas and military voters
- (f) Campaign finance
- (g) Security planning

- (h) Issues in voter registration
 - (i) Polling place set up/management
 - (j) Vote Center training
 - (k) Mail ballot training
 - (l) Budgeting
 - (m) Recounts and election contests
 - (n) Other timely, relevant topics as determined by the Secretary of State
- 40.5 Credit for Other Trainings. Persons may apply to the advisory board to request credit towards Colorado certification for training provided by other agencies or organizations. The Board may grant core or elective hours for such trainings.
- 40.6 Continuing Elections Education (CEE). In order to maintain certification, a person shall attend and complete at least two electives or one core class every calendar year.
- 40.7 Completing Colorado certification
- 40.7.1 After a person has completed the requirements for certification, the person shall submit an application for Colorado certification to the Secretary of State's office.
 - 40.7.2 The Secretary of State shall create an application form to be used by applicants for certification following completion of coursework. The applicants shall provide the following information:
 - (a) the applicant's name, name of county jurisdiction, address, telephone and e-mail;
 - (b) the applicant title(s) and date(s) of the classes the applicant attended;
 - (c) the applicant's signature and date signed; and
 - (d) the supervisor's signature (if applicable)
 - 40.7.2.1 The form shall also include a section for Secretary of State office use only.
 - 40.7.3 The Secretary of State shall review the application with reference to the Secretary of State records. If the application is complete and accurate, the Secretary of State shall forward it to the advisory board for its review and approval. Upon approval by the advisory board, the Secretary of State shall issue a certificate that the person is a Certified Colorado Election Official.
 - 40.7.4 The Secretary of State shall track attendance at all classes and keep records of attendance, continuing elections education, and records of those persons who are certified and persons who are in the certification process.
- 40.8 De-certification
- 40.8.1 The Secretary of State has the authority to de-certify any person who does not fulfill the continuing elections education requirements.
 - 40.8.2 If a certification lapses within 18 months, the person shall be required to make up the

continuing elections education credits to maintain certification.

40.8.3 If a certification lapses after a period greater than 18 months, the person shall be required to fulfill all the necessary certification requirements and re-apply for certification.

40.8.4 The advisory board created shall have the authority to review all de-certifications and take into account any extenuating circumstances regarding re-certification.

40.9 Applications for certification received in the Year 2006

40.9.1 For applications for certification received by the secretary of state in the Year 2006, the advisory board may grant approval of certification if the applicant has met the following requirements:

A. Applicant has completed courses that include subject matter involving:

I. General Election law

II. The Federal "Help America Vote Act of 2002" and

III. Professional development; and

B. Applicant has completed a minimum of forty hours of training conducted by the secretary of state.

40.10 Credit for Teaching Classes

40.10.1 A person who teaches a class and/or persons who substantially assist with preparation for the class as part of the certification shall receive the equivalent of two core credits, or three elective credits. The participant shall submit a written request to the secretary of state's office requesting credit for either two core credits or three elective credits. The advisory board shall determine which persons are eligible for these credits.

40.11 Future regional and web-based training

40.11.1 It is the intent of this rule that the Secretary of State and the advisory board develop regional trainings to make certification and training more accessible. It is the intent that the Secretary of State explore virtual and web-based training for use as part of the certification and education process.

Rule 41. Rules Concerning Canvassing

41.1 Definitions

(a) "Canvass" shall mean the audit function of the election and the process of reconciling the number of ballots counted to the number of voters who voted. The canvass also includes the process of reconciling detailed ballot logs and Statement of Ballot Forms.

(b) "Canvass workers" shall mean workers appointed or hired by the designated election official to assist in the preparation and conduct of the canvass.

(c) "Statement of Ballot Forms" shall mean the form used at the polling location pursuant to

sections 1-7-505(2) and 1-7-601(2), C.R.S., that accounts for all ballots at that location. The form includes information required by this rule.

41.2 Detailed Ballot Log

- 41.2.1 The designated election official shall keep a detailed log of all ballots. The designated election official shall begin the log as soon as ballots are ordered and received. The log shall include the polling location and/or precinct number(s), ballot style(s), and account for every ballot that is received and distributed. The detailed ballot log shall be reconciled at the conclusion of each workday.
- 41.2.2 The designated election official shall keep and reconcile daily logs of mail-in, mail and early voting ballots.
- 41.2.3 The designated election official shall indicate in the detailed log the number of paper ballots that are sent to each polling location for use on election day.
- 41.2.4 All required logs may be kept either by electronic or manual means.

41.3 Election Day Tracking Process

- 41.3.1 The designated election official shall supply each polling location with a Statement of Ballots Form. Combined precincts may use one form. The form shall include a place for the judges to account for the following information:
 - (a) The name or number(s) of the precinct or vote center;
 - (b) The number of ballots provided to the polling location;
 - (c) The number of ballots cast;
 - (d) The number of unvoted ballots
 - (e) The number of damaged or spoiled ballots; and
 - (f) The number of voted provisional ballots.
- 41.3.2 The total number of voted ballots should be reconciled to the number of voters who voted.
- 41.3.3 The total number of voted ballots, spoiled or damaged ballots, provisional ballots and unvoted ballots should be reconciled to be the same as the number of total ballots received at the polling location before voting begins.
- 41.3.4 The designated election official shall ensure that the total of the number of people who signed the pollbook is reconciled to the total of the number of ballots cast.
- 41.3.5 If there is a discrepancy in the numbers on the Statement of Ballots form, the judge shall make written notation explaining why the numbers do not balance (for example, voter signed in but left the polling place without voting, etc.).
- 41.3.6 The judges shall return the completed Statement of Ballots form to the designated election official with the other precinct supplies and mail a duplicate copy pursuant to section 1-7-505, C.R.S.

41.4 Designated Election Official's Disposition of Forms

- 41.4.1 The designated election official shall review the Statement of Ballots form and ensure that it is complete and correct.
- 41.4.2 If the designated election official or the canvass board discovers a problem with the Statement of Ballots form that cannot be easily resolved, he or she shall have the right to contact the election judges and ensure that the discrepancy is explained or corrected.

41.5 Procedures for the Day of the Canvass

- 41.5.1 In order for the canvass board established pursuant to section 1-10-101, C.R.S., to perform its duties, pursuant to section 1-10-101.5, C.R.S., the designated election official shall provide the following information:
 - (a) The name of each candidate receiving votes, the office, and the total number of votes received;
 - (b) The number/letter of each ballot issue or question and the votes received;
 - (c) The number of voters who voted early;
 - (d) The number of mail-in or mail ballots cast, including the number accepted and rejected;
 - (e) The number of provisional ballots counted.
- 41.5.2 The canvass board shall confirm that the number of ballots cast is less than or equal to the number of people who actually voted in each precinct or vote center.
- 41.5.3 The designated election official shall use a canvass form that is approved by the Secretary of State.
- 41.5.4 Any written documentation regarding official numbers shall be included as part of the canvass.

41.6 Official Abstract

- 41.6.1 The designated election official shall ensure that the number of active voters on election day pursuant to section 1-10-105(5)(c), C.R.S., is the number used on the official abstract.
- 41.6.2 The official abstract shall be compiled on a format approved by the Secretary of State.
- 41.6.3 The official abstract shall include, by precinct/ballot style or vote center, where applicable:
 - (a) The statement of votes counted by race and ballot question or issue;
 - (b) The total active registered electors in the precinct and the total for the jurisdiction holding the election;
 - (c) The total number of electors voting in each precinct, and the total for the jurisdiction holding the election;

- (d) The number of voters who voted early;
- (e) The number of emergency registrations;
- (f) The number of mail-in or mail ballots counted and the number rejected;
- (g) The number of provisional ballots counted and the number rejected listed by each rejection code pursuant to Rule 26.5.4; and
- (h) The number of damaged and spoiled ballots.

41.7 The Abstract shall be the Official, Permanent Record.

41.7.1 The designated election official shall keep all official canvass reports and forms as part of the official permanent election record.

41.8 Appointment of Canvass Workers

41.8.1 The designated election official may utilize canvass workers to assist in the preparation and conduct of the canvass.

41.9 Voter History

41.9.1 After the canvass process is completed, the designated election official shall give credit to each voter who votes by mail, at an early voting site, or at a polling location.

41.9.2 If the voter history records do not match the number of voters who voted at that election, the designated election official shall ensure the following:

(a) Each voter was given credit for voting; and

(b) All pollbooks and signature cards are accounted for.

41.9.3 All research concerning discrepancies shall be explained and documented.

41.10 Written Complaints. In accordance with section 1-7-514(2)(b), C.R.S., the designated election official shall provide to the canvass board any written complaint about a voting device submitted by a registered elector, and, if resolved, how it was resolved and if pending, a proposal for how the issue will be resolved.

Rule 42. Rules Concerning Use of Facsimile for Administrative or Medical Emergency Outside of the UOCAVA Context.

42.1 Pursuant to section 1-8-115, C.R.S., the designated election official may use means of electronic transfer to provide a mail-in ballot to the eligible elector for an administrative or medical emergency following the procedures outlined in section 1-8-115 C.R.S., and this rule.

42.2 "Electronic Transfer" shall mean the use of facsimile and shall not include the use of e-mail under section 1-8-115, C. R. S.

42.3 If a mail-in ballot is delivered to an elector by facsimile transmission, the elector may return the ballot by facsimile transmission.

42.4 Mail-in ballots sent by facsimile transmission shall include all races, ballot issues, and questions

on which the elector may vote. Counties are encouraged to work with their vendors to develop a ballot that is clearly legible to the elector to increase the readability of the ballot and to avoid possible misinterpretations of the elector's intended choice because of poor transmission of the document.

- 42.5 Instructions faxed to the elector with the ballot shall include the following information:
- (a) The name of the elector;
 - (b) The recipient's fax number;
 - (c) The total number of pages to be transmitted;
 - (d) The total number of ballot pages;
 - (e) The telephone number or e-mail address where the eligible elector may send questions regarding the ballot;
 - (f) A notice that the recipient shall not duplicate the ballot for any other voter;
 - (g) The fax number where the eligible elector may return their completed ballot.
 - (h) Return address information for the designated election official and instructions to mark, "official ballot enclosed" on the elector's return envelope;
 - (i) A notice that the ballot must be received by the designated election official by mail, hand delivery or received by fax no later than 7:00 p.m. Mountain Standard Time on election day; and
 - (j) Instructions for returning the medical/administrative emergency form.
 - (k) A notice that the ballot will not be a confidential ballot.
- 42.6 The transmission shall also include a mail-in ballot self-affirmation pursuant to 1-8-114 (1) C. R. S.
- 42.7 The fax transmission log as well as any other fax record shall be part of the official election record.
- 42.7.1 A Fax Transmission log shall be maintained by the designated election official of each ballot sent to a voter by facsimile indicating:
- (a) The name of the voter;
 - (b) The fax number to which the ballot was sent;
 - (c) The unique identification number of the faxed ballot;
 - (d) The date the ballot and instructions were faxed; and
 - (e) The initials of the designated election official's employee sending the fax.
- 42.8 The designated election official shall fax the blank ballot with the instructions to the fax number provided by the elector. If the transmission is unsuccessful, the designated election official shall attempt to fax at least two more times and make reasonable effort, if possible, to ensure the

transmission was successful.

42.9 Upon receipt of the ballot, when the information from the signed affidavit has been verified, a bipartisan team of judges shall duplicate the ballot. Duplicating judges shall not reveal how the elector has cast his or her ballot.

42.10 Medical Emergency

42.10.1 For purposes of section 1-8-115(1)(a), C.R.S., "second degree" is defined as spouse, parents, children, brothers and sisters, grandparents, and grandchildren related by blood or marriage.

42.10.2 For the purposes of section 1-8-115(1)(a), C.R.S., the "last day to apply for a mail-in ballot" is defined as the last day to apply for a ballot by mail in accordance with section 1-8-104(3), C.R.S.

42.11 Administrative Emergency. If the designated election official is unable to provide a mail-in ballot to an elector by any other means, the designated election official shall seek authority from the Secretary of State to provide a mail-in ballot to the elector pursuant to section 1-8-115(4), C.R.S., using fax transmission.

42.11.1 This Rule 42.11 shall apply only to eligible electors who are properly registered and have timely filed a mail-in ballot application.

42.11.2 The Secretary of State shall designate a point of contact for each election for Emergency Electronic Transfer Requests no later than twenty-one (21) days prior to an election. The Secretary of State shall notify the counties by e-mail who the designated point of contact shall be, and post the contact information for the designated point of contact on the Secretary of State's website.

42.11.3 The designated election official shall submit the request in writing from the Secretary of State using the Emergency Electronic Transfer form. E-mail is the preferred method of communication. If possible, the designated election official shall attempt to consolidate requests to the Secretary of State.

42.11.4 The form for requesting an emergency electronic transfer shall be posted on the Secretary of State's website. The form must contain the following information:

- (a) Contact information, including name, address, phone number, fax number, and e-mail address for the designated election official or their designee;
- (b) Date and time of request sent by designated election official;
- (c) Confirmation e-mail to designated election official by Secretary of State upon receipt of request
- (d) Justification as to why the ballot(s) need to be sent by fax, which includes the following required information:
 - (1) The elector's name;
 - (2) When the elector applied for the mail-in ballot;
 - (3) The date when the designated election official sent the mail-in ballot to the elector (if applicable);

- (4) The date the elector contacted the designated election official with information regarding failure to receive the ballot;
 - (5) A suggested timeframe for the Secretary of State to respond;
 - (6) The quantity of ballots to be sent by fax; and
 - (7) Approval or disapproval by the Secretary of State; if denied, reason for the denial.
- (e) Confirmation e-mail from the designated election official to Secretary of State upon receipt of approval or disapproval.
- 42.11.5 The Secretary of State shall respond in writing to the designated election official as soon as possible, but no later than eight (8) business hours after receipt of the request.
- 42.11.6 The Secretary of State shall have the ability to issue a blanket approval by electronic transfer.
- 42.12 Timeliness of filing applications for emergency mail-in ballots
- 42.12.1 Requests for emergency mail-in ballots issued for medical reasons pursuant to Section 1-8-115(1)(a), C.R.S. must be received by the designated election official no later than 5:00 p.m. on the day of election.
- 42.12.2 Requests for emergency mail-in ballots issued for administrative reasons pursuant to Section 1-8-115(2), C.R.S. must be received by the designated election official no later than 7:00 P.M. on the day of the election.
- 42.12.3 Requests for emergency mail-in ballots shall not be processed if the request is received after the required deadline.

Rule 43. County Security Procedures

43.1 Definitions

- 43.1.1 "Chain of custody log" shall, for the purposes of this rule mean a written record that shows that the equipment and all associated data are secured according to these procedures and in the documented control of an employee or deputized election judge through the entire time of ownership by the jurisdiction.
- 43.1.2 "Continuous video security surveillance recording" shall, for the purposes of this rule, mean video monitoring by a device which continuously records a designated location. Alternatively, this definition may be met by the use of a "non-continuous" recording, provided that a device is used which samples the functionality of the video recorder without interruption, evaluates the detector response at least once every 15 seconds, and computes and records the average value at least every 60 seconds, except during allowable periods of calibration.
- 43.1.3 "DRE" means a direct recording electronic voting device. A DRE is a voting device that records votes by means of a ballot display provided with mechanical or electro-optical components or an audio ballot that can be activated by the voter; that processes data by means of a computer program; and that records voting data and ballot images in memory

components or other media. The device may produce a tabulation of the voting data stored in a removable memory component and as printed copy. The device may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from remote sites to the central location.

- 43.1.4 "Employee" shall, for the purposes of this rule, mean all full-time, part-time, permanent and contract employees of the county who have had a criminal history check conducted in accordance with Rule 11.2 and are deputized by the county clerk and recorder to prepare or maintain the voting system or election setup materials, staff the counting center and who have any access to the electromechanical voting systems or electronic vote tabulating equipment.
- 43.1.5 "Removable card or cartridge" shall, for the purposes of this rule, mean all programming cards or cartridges except voter activation cards that store firmware, software or data.
- 43.1.6 "Trusted Build" means the write-once installation disk or disks for software and firmware for which the Secretary of State or his/her agent has established the chain of evidence to the building of a disk, which is then used to establish and/or re-establish the chain of custody of any component of the voting system which contains firmware or software. The trusted build is the origin of the chain of evidence for any software and firmware component of the voting system.
- 43.2 Pursuant to section 1-5-616(5), C.R.S., each county shall file with the Secretary of State a security plan that meets or exceeds the standards set forth in this rule. The plan filed with the Secretary of State in accordance with this rule shall provide a point by point detailed response with a proposed solution to each of the requirements set forth in this rule.
- 43.3 The county shall file security procedures annually no later than sixty (60) days prior to the first election in which the procedures will be used.
- 43.4 If no changes have occurred since the last security procedures filed, the county shall file a statement to that effect.
- 43.5 Revisions to previously filed security procedures shall clearly state which part of the procedures previously filed have been revised.
- 43.6 Each designated election official may change the security procedures within sixty (60) days of an election as a result of an emergency situation or other unforeseen circumstance, and document any changes. The designated election official shall file any revisions with the Secretary of State within five (5) days of the change.
- 43.7 If, pursuant to section 1-5-616(5)(b), C.R.S., the Secretary of State is unable to complete its review, the procedures or revisions shall be temporarily approved until such time as the review is completed. The Secretary of State shall notify the county of temporary approval.
- 43.8 Security Procedures shall at a minimum include, if applicable:
- 43.8.1 General Requirements:
- a. At all times removable memory cards and cartridges shall be handled in a secure manner as follows. When not sealed in voting machines, all removable cards and cartridges shall be transferred and stored in secure containers with at least one tamper-evident seal with printed serial numbers. The integrity and serial number of each seal shall be verified by election judges or county personnel at shipping and receiving locations.

- b. All documentation of seals, chain of custody, and other documents related to the transfer of equipment between parties shall be maintained on file by the county clerk and recorder and is subject to inspection by the Secretary of State.
- c. The chain of custody for each voting device must be maintained and documented throughout ownership or leasing of the device by the county clerk and recorder.
- d. Only deputized clerks, election judges, or canvass board members sworn under oath are allowed to handle ballots, which include V-VPAT records.
- e. No additional or modified software developed by the Vendor that is not specifically listed on the Secretary of State's certificate and verified against the state trusted build shall be installed on any component of the voting system. Nothing in this rule shall preclude the use of commercial off-the-shelf software, provided that the COTS software is included in the certified list of services and executables for the certified voting systems.
- f. Any form or log containing "date" means to note the month, calendar day, year, hour, minute, and whether the time is a.m. or p.m.

43.8.2 Physical Locking Mechanisms and Seals

- a. DREs. all DRE voting devices shall have industry standard, commercial off the shelf tamper-evident seals with printed, unique serial numbers affixed as follows:
 - i. A seal shall be placed over any removable card or cartridge that is inserted into the unit, or over the slot or door covering the card or cartridge.
 - ii. A seal is to be placed over any removable card or cartridge slot when no card or cartridge is inserted into the unit.
 - iii. Tamper-evident, numbered seals shall be affixed across the seam at which the two sides of the case of the electronic components of the voting unit join, with at least one seal for each of the four sides of the device.
 - iv. If the voting device contains one or more slots for a flash memory card, a seal shall be affixed over each flash card or each flash card slot, door, or access panel.
 - v. These same procedures also apply to the Judge's Booth Controller (JBC) unit for the Hart InterCivic System.
 - vi. All seals are to be verified by two employees or election judges.
- b. V-VPATs. all V-VPAT units shall be sealed upon verification of no votes having been cast on the paper record prior to being attached to a specific voting device. Seals must be verified as being intact by at least two election judges prior to the start of voting, and at the close of voting. V-VPAT records shall either remain in the V-VPAT canister, or be sealed and secured in a suitable device for protecting privacy or as described in Election Rule 11.
- c. Remote or Central-count Optical Scanners. Optical scanners used in a remote or central tabulating location shall have tamper-evident seals as follows:

- i. A seal is to be placed over each card or cartridge inserted into the unit, or over any door or slot containing the card or cartridge.
- ii. A seal is to be placed over each empty card or cartridge slot or door covering the area where the card or cartridge is inserted.
- ii. Prior to the start of voting and after the close of voting, all seals are to be verified as being intact by two employees or election judges.
- d. Memory Cards/Cartridges. Each removable card or cartridge shall have a permanent serial number assigned and securely affixed to it. The manufacturer assigned serial number may be utilized for this purpose.
- e. The county clerk and recorder shall maintain a written or electronic log that records which card or cartridge and which seal number is assigned to each voting unit. Any breach of control over a card/cartridge or door or slot for a card/cartridge before an election shall require that the county clerk and recorder be notified and follow the procedures specific to the incident as described in section 43.8.11 of this Rule.

43.8.3 Individuals With Access to Keys, Door Codes, and Vault Combinations

43.8.3.1 Counties are required to state the positions and dates of CBI background check for employees with access to the areas addressed in this Rule 43.8.3.

43.8.3.2 For all counties, use of keypad door codes or locks, vault combinations, computer and server passwords, encryption key codes, and administrator passwords shall be changed at least once per calendar year prior to the first election of the year. Only employees may be given access to such codes, combinations, passwords, and encryption keys, pursuant to the following limitations. Counties may request a variance from the Secretary of State for the requirements set forth in this Rule 43.8.3 only in extreme circumstances.

43.8.3.3 The requirements for an employee to be given access to a code, combination, password, or encryption key are as follows:

- a. Access to the code, combination, password, or encryption key for the storage area for voting equipment and the mail-in ballot counting areas shall be restricted to employees as defined in Rule 43.1.4.
- b. Access to the code, combination, password, or encryption key for the mail-in ballot storage area and counting room or tabulation workstations shall be restricted to ten (10) employees as defined in Rule 43.1.4.
- c. Except for emergency personnel, no other individuals shall be present in these locations unless supervised by one or more employees as defined in Rule 43.1.4.
 - i. Each individual who has access to the central election management system or central tabulator shall have their own unique username and password. No individual shall use any other individual's username or password. Shared accounts shall be prohibited.

- ii. The county shall maintain a log of each person who enters the ballot storage room, including the person's name, signature, and date and time of entry. If access to the ballot storage room is controlled by use of key card or similar door access system that is capable of producing a printed paper log including the person's name and date and time of entry, such a log shall meet the requirements of this rule.

43.8.3.4 Computer room access shall be limited to employees and election judges only, and the delivery of ballots between the preparation room and computer room shall be performed by messengers or runners wearing distinguishing identification.

43.8.4 Temperature-controlled Storage

43.8.4.1 Counties shall attest to the temperature-control settings used with the following components of a voting system. Information submitted to the Secretary of State shall indicate the specifics for each type of component, as well as the specific environment used, which may include, but is not limited to controlled offices, controlled vaults, and controlled warehouses. The settings for temperature control must be at least the following:

- a. Servers and Workstations. Servers and workstations shall be maintained in a temperature-controlled environment. Maximum temperature shall at no time exceed 90 degrees fahrenheit.
- b. DREs. DREs shall be maintained in a temperature-controlled environment. The temperature settings shall be maintained at a minimum of 60 degrees fahrenheit and a maximum of 90 degrees fahrenheit.
- c. Optical Scanners. Optical scanners shall be maintained in a temperature-controlled environment. The temperature settings shall be maintained at a minimum of 50 degrees fahrenheit and a maximum of 90 degrees fahrenheit.
- d. V-VPAT Records. In addition to the requirements set forth in Rule 11, V-VPAT records shall be maintained in a temperature-controlled environment. The temperature settings shall be maintained at a minimum of 50 degrees fahrenheit and a maximum of 80 degrees fahrenheit. V-VPAT records shall also be maintained in a dry environment, with storage at least 4 inches above the finished floor, for a period of 25 months following the election. The humidity of the environment shall not exceed 80% humidity for a period of more than 24 hours. V-VPAT records shall be stored in a manner that prevents exposure to light, except as necessary during recounts and audits.
- e. Paper Ballots. Paper ballots shall be maintained in a dry, humidity-controlled environment. The humidity of the environment shall not exceed 80% humidity for a period of more than 24 hours. Additionally, paper ballots shall be stored at least 4 inches above the finished floor, for a period of twenty-five (25) months following the election.
- f. Video Data Records. Video data records shall be maintained in a dry, temperature-controlled environment. The humidity of the environment

shall not exceed 80% humidity for a period of more than 24 hours. Temperature settings shall be maintained at a minimum of 40 degrees fahrenheit and a maximum of 80 degrees fahrenheit. Additionally, video data records shall be stored at least 4 inches above the finished floor, for a period of twenty-five (25) months following the election.

43.8.5 Security Cameras or Other Surveillance

43.8.5.1 Unless otherwise instructed, continuous video security surveillance recordings of specified areas shall be made beginning at least sixty (60) days prior to the election and continuing through at least thirty (30) days after the election, unless there is a recount or contest. If a recount or contest occurs, the recording shall continue through the conclusion of all such activity. The following are the specific minimum requirements:

- a. Counties over 50,000 registered voters shall make continuous video security surveillance recordings of the following areas:
 - i. All areas in which election software is used, including but not limited to programming, downloading memory cards, uploading memory cards, tallying results, and results reporting.
 - ii. All areas used for processing mail-in ballots, including but not limited to areas used for Signature Verification, tabulation, or storage of voted ballots beginning at least thirty-five (35) days prior to the election and continuing through at least thirty (30) days after the election, unless there is a recount or contest. If a recount or contest occurs, the recording shall continue through the conclusion of all such activity.
 - iii. The storage area for all voting equipment.
- b. Counties under 50,000 registered voters shall make continuous video security surveillance recordings of the following areas:
 - i. All areas in which election software is used, including but not limited to programming, downloading memory cards, uploading memory cards, tallying results, and results reporting.

43.8.6 Equipment Maintenance Procedures

43.8.6.1 In addition to the requirements for voting systems specified in Rule 11, the following minimum standards shall be adhered to:

- a. All equipment shall be stored throughout the year with serially-numbered, tamper-evident seals over the memory card slots for each device. The county shall maintain a log of the seals used for each device consistent to the logs used for tracking Election Day seals.
- b. For equipment being sent to the vendor for offsite repairs/replacements, the county must maintain a log file for the device that shall contain the following: the model number, serial number, and the type of device; the firmware version; the software version (as applicable); date of submission to the vendor.

- c. For equipment receiving maintenance on-site by the vendor, the county shall verify that a CBI background check has been conducted on all vendor personnel with access to any component of the voting system. CBI information shall be updated and maintained on file annually. Additionally, the vendor's representative shall be escorted at all times by an employee while on-site. At no time shall the voting system vendor have access to any component of the voting system without supervision by an employee.
- d. Upon completion of any maintenance, the county shall verify or reinstate the trusted build and conduct a full acceptance test of equipment that shall, at a minimum, include the Hardware Diagnostics test, as indicated in Rule 11, and conduct a mock election in which an employee shall cast a minimum of ten (10) ballots on the device to ensure tabulation of votes is working correctly. All documentation of results of the acceptance testing shall be maintained on file with the specific device.
- e. The Secretary of State shall be required to inspect the counties' maintenance records on a randomly selected one percent (1%) of all voting devices in possession of the counties throughout the state in even-numbered years, and to inspect the maintenance records on a randomly selected five percent (5%) of all voting devices in possession of the counties throughout the state in odd-numbered years.

43.8.7. Transportation of Equipment, Ballot Boxes, and Ballots

43.8.7.1 Counties are required to submit detailed plans to the Secretary of State prior to an election regarding the transportation of equipment and ballots both to remote voting sites and back to the central elections office or storage facility. While transportation of equipment may be handled in a multitude of methods, the following standards shall be followed when transporting voting equipment to the voting location:

- a. Transportation by County Personnel. County personnel shall at all times display a badge or other identification provided by the County. Two (2) signatures and date of employees shall be required at the departure location verifying that the equipment, including memory card or cartridge, is sealed to prevent tampering. Upon delivery of equipment, at least two (2) employees or election judges shall verify that all seals are intact and that the serial numbers on the seals agree with those on the seal-tracking log, and sign and date the seal-tracking log. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this Rule.
- b. Transportation by Election Judges. Election judges that are receiving equipment from county personnel shall inspect all components of voting devices and verify the specific numbers by signature and date on the seal-tracking log for the device. The election judge receiving the equipment shall request two (2) election judges at the voting location to inspect the devices and to sign and date the seal-tracking log indicating that all seals are intact and that the serial numbers on the seals agree with those on the seal-tracking log. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this Rule.

- c. Transportation by Contract. Counties electing to contract the delivery of equipment to remote voting locations shall perform CBI background checks on the specific individuals who will be delivering the equipment. Two (2) employees or election judges shall verify, sign, and date the seal-tracking log upon release of the equipment and two other employees or election judges shall verify, sign, and date the seal-tracking log upon acceptance of the equipment at the delivery point. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this Rule.

43.8.7.2 The following standards shall be followed when transporting voting equipment from the voting location:

- a. If memory cards or cartridges are to be removed from voting devices at remote voting locations, the following procedures are to be followed:
 - i. Before removing a memory card or cartridge, two (2) election judges shall inspect and verify that all seals on the device are intact and that the serial numbers on the seals agree with those listed on the seal-tracking log. Both election judges shall sign and date the seal-tracking log prior to breaking the seal. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this Rule.
 - ii. Election judges shall place the memory cards or cartridges in a sealable transfer case that shall be sealed with at least one (1) seal. Additional seal logs shall be maintained for the transfer case of the memory cards or cartridges.
 - iii. Election judges shall place new seals over the empty memory card/cartridge slot and/or door and document the seal numbers used.
 - iv. At least two (2) county personnel or election judges shall accompany the transfer case containing the memory card/cartridge to the drop off location. Seal integrity and serial numbers will be verified, and logs will be signed and dated by election judges receiving the equipment. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, the county personnel or election judges shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this rule.
 - v. County personnel or election judges transporting secured voting equipment must maintain chain of custody logs and seal-tracking logs. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this rule.

- b. If devices are to be delivered with memory cards/cartridges intact, the following procedures shall be followed:
 - i. Two (2) county personnel or election judges shall verify that all seals are intact at the close of polls. Election judges shall sign the seal-tracking log with such indication. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this Rule.
 - ii. At least two (2) county personnel or election judges shall accompany the secured equipment to the drop-off location. Seals will be verified, and logs will be signed and dated by the county election official receiving the equipment. If there is any evidence of possible tampering with a seal, or if the serial numbers do not agree, they shall immediately notify the county clerk and recorder who shall follow the procedures specific to the incident as described in section 43.8.11 of this Rule.
 - iii. Upon confirmation that the seals are intact and bear the correct numbers, the memory card or cartridge shall be removed and uploaded into the central count system.
 - iv. Election judges shall secure the equipment by placing a tamper-evident seal over the memory card slot and by updating the documentation to reflect the new seal numbers.

43.8.8. Emergency Contingency Plans for Voting Equipment and Voting Locations

43.8.8.1 All remote devices used in an election shall have sufficient battery backup for at least two (2) hours of use. If this requirement is met by reliance on the internal battery of the voting device, then the county clerk and recorder shall verify that all batteries are fully charged and in working order prior to the opening of polls at the voting location. This requirement also can be met with the purchase of third-party battery backup systems.

43.8.8.2 In the event of a serious or catastrophic equipment failure or equipment being removed from service at one or more polling locations, or there is not adequate backup equipment to meet the requirements of Section 1-5-501, C.R.S., the county clerk and recorder shall contact the Secretary of State for authorization to use provisional ballots or mail-in ballots as an emergency voting method.

43.8.9. Internal Controls for the Voting System

43.8.9.1 In addition to the access controls discussed in section 43.8.3 of this Rule, counties are required to change all passwords and limit access to the following areas:

- a. Software. All software passwords shall be changed once per calendar year prior to the first election. This includes any boot or startup passwords in use, as well as any administrator and user passwords and remote device passwords.

- b. Hardware. All hardware passwords shall be changed once per calendar year prior to the first election. This includes any encryption keys, key card tools, supervisor codes, poll worker passwords on smart cards, USB keys, tokens, and voting devices themselves as it applies to the specific system.
- c. Password Management. Access to the administrative passwords to the election management software shall be limited to two (2) employees. Access to passwords for all components of the election software and hardware shall be limited to two (2) employees. An additional ten (10) employees may have access to the administrative passwords for the software components and an additional ten (10) employees may have access to the administrative passwords for the hardware components of the voting system.
- d. Internet Access. At no time shall any component of the voting system be connected, directly or indirectly, to the Internet.
- e. Modem Transmission. At no time shall any component of the voting system be connected to another device except for the vote tally software, directly or indirectly, by modem as allowable by the certification of the specific device.
- f. Remote sites may use modem functions of optical scanners and DREs only for the purpose of transmitting unofficial results, as permitted by the Secretary of State's certification documents for the specific systems. Counties using modem devices to transmit results shall meet the following requirements:
 - i. Transmissions may be used only for sending test data or unofficial results; after all other steps have been taken to close the polls. All summary tapes shall be printed before connecting any of the machines to a modem or telephone line.
 - ii. Modems shall not be used for any programming, setup, or individual ballot-casting transmissions.
 - iii. The receiving telephone number for the modem transmission shall be changed at least once per calendar year prior to the first election.
 - iv. A maximum of six (6) employees shall have access to the telephone number receiving the transmission. Counties shall not publish or print the receiving telephone number for any election judge. To the extent possible, the telephone number shall be programmed into the device and used by the device in a way that is hidden from election judges and voters from seeing the display of the number at any time.
- g. Authorized Employees. Counties shall include in their security plans the positions and dates of CBI background checks for employees with access to any of the areas or equipment set forth in this Rule. Each county shall maintain a storage-facility access log that details employee name, date, and time of access to the storage facility in which the software, hardware, or components of any voting system are maintained. If access to the storage facility is controlled by use of key card or similar door access system that is capable of producing a printed paper log including the person's name and date and time of entry, such a log shall meet the requirements of this rule.

43.8.10. Security Training for Election Judges

43.8.10.1 Counties shall include in their security plan the details of their security training for their election judges, which shall include the anticipated time of training, location of training, and number of election judges receiving the security training, as it applies to the following requirements:

- a. The county shall conduct a separate training module for field technicians and election judges who will be responsible for overseeing the transportation and use of the voting systems, picking up supplies, and troubleshooting device problems throughout the Election Day.
- b. Security training shall include the following components:
 - i. Proper application and verification of seals and seal-tracking logs;
 - ii. How to detect tampering with voting equipment, memory cards/cartridges, or election data on the part of anyone coming in contact with voting equipment, including employees, other election judges, vendor personnel, or voters;
 - iii. Ensuring privacy in voting booths;
 - iv. The nature of and reasons for the steps taken to mitigate the security vulnerabilities of voting systems;
 - v. V-VPAT requirements;
 - vi. Chain-of-custody requirements for voting equipment, memory cards/cartridges, and other election materials;
 - vii. Ballot security;
 - viii. Voter anonymity.; and
 - ix. Recognition and reporting of security incidents.

43.8.11 Remedies

43.8.11.1 If it is detected that the seal has been broken or if there is a discrepancy between the log and the serial number of either a voting device, or a memory card or cartridge, the condition must be confirmed by one or more of the remaining election judges for the location. The election judges shall immediately notify the county clerk and recorder, who shall investigate, report the incident to the Secretary of State, and follow the appropriate remedy as indicated in this rule or as directed by the Secretary of State.

43.8.11.2 If a seal has been broken or removed under the following conditions:

- a. During either the transportation, setup, opening polls, or closing polls for the device;
- b. Two election judges can verify the breaking or removing of the seal; and

- c. The chain of custody has not been broken, meaning the device has been within ownership of election judges or employees only during this time;

The county clerk and recorder shall instruct the election judges to complete a security incident report detailing the incident, replacing the seals, and updating the chain of custody log as appropriate.

The Security incident report shall be filed with the Secretary of State during the canvass period.

43.8.11.3 If a seal has been broken or removed outside of the situation in 43.8.11.2, Any unit involved must undergo the reinstatement or verification of the trusted build. county clerk and recorders will be required to complete a security incident report. The minimum Sspecific requirements on the remedy are as follows (additional requirements may be determined based on the details of the incident report):

- a. If the evidence is prior to the start of voting:
 - i. The device shall be sealed and securely delivered to the county clerk and recorder.
 - ii. The county clerk and recorder or his or her designee shall remove and secure the memory card following the procedures in section 43.8.1(a). The county clerk and recorder or his or her designee shall follow the State instructions for installing/verifying the trusted build for the specific device. The county clerk and recorder or his or her designee shall install a new, secure memory card into the device, conduct a hardware diagnostics test as prescribed in Rule 11, and proceed to conduct a logic and accuracy test on the machine in full election mode, casting at least 25 ballots on the device. All documentation of testing and chain of custody shall be maintained on file for each specific device.
 - iii. Complete the necessary seal process and documentation to re-establish the chain of custody for the device and new memory card.
 - iv. Set the machine to election mode ready for a zero report.
 - vi. Complete necessary reports for the Secretary of State regarding the incident as soon as practicable, but prior to the close of the canvass period for the election.
- b. If the evidence is after votes have been cast on the device but before the close of polls:
 - i. The device shall be sealed and securely delivered to the county clerk and recorder.
 - ii. The county clerk and recorder or his or her designee shall close the election on that device, and perform a complete manual verification of the paper ballots (or V-VPAT Records) to the

summary tape printed on the device that represents the record of votes on the memory card.

- iii. If the totals do not match then only the paper record will be accepted as the official results for that device, and the device shall be re-sealed, secured and reported to the Secretary of State immediately. The device shall not be used for the remainder of the election unless the firmware and/or software have been reformatted with the trusted build.
- iv. If the totals match, the memory card may be uploaded into the tally software at the close of polls.
- v. After verifying the totals, the paper records and memory card shall be secured with seals and documented properly.
- vi. A new secured memory card shall be placed in the device. The county clerk and recorder or his or her designee shall follow the State instructions for installing/verifying the trusted build for the specific device. The county clerk and recorder or his or her designee shall conduct a hardware diagnostics test as prescribed in Rule 11. All documentation of testing and chain of custody shall be maintained on file for each specific device.
- vii. Complete the necessary seal process and documentation to establish the chain of custody for the device and memory card.
- viii. Set the machine to election mode ready for a zero report.
- ix. At the conclusion of the election a full (all races) post-election audit shall be conducted on the device and results reported to the Secretary of State as required by Rule 11. This requirement is in addition to the random selection conducted by the Secretary of State.
- x. Complete necessary reports for the Secretary of State regarding the incident as soon as practicable, but prior to the close of the canvass period for the election.

c. If the evidence is after the close of polls:

- i. The device shall be sealed and securely delivered to the county clerk and recorder.
- ii. The county clerk and recorder or his or her designee shall perform a complete manual verification of the paper ballots (or V-VPAT Records) to the summary tape printed on the device that represents the record of votes on the memory card.
- iii. If the totals do not match then only the paper record will be accepted as the official results for that device, and the device shall be re-sealed, secured and reported to the Secretary of State immediately. The device shall not be used for the remainder of the election unless the firmware and/or software have been reformatted with the trusted build.

- iv. If the totals match, the memory card may be uploaded into the tally software at the close of polls.
- v. After verifying the totals, the paper records and memory card shall be secured with seals and documented properly.
- vi. The county clerk and recorder or his or he designee shall follow the State instructions for installing/verifying the trusted build for the specific device and complete the necessary seal process and documentation to establish the chain of custody for the device.
- vii. During the canvass process, a full (all races) post-election audit shall be conducted on the device and results reported to the Secretary of State as required by Rule 11. This requirement is in addition to the random selection conducted by the Secretary of State.
- viii. Complete necessary reports for the Secretary of State regarding the incident prior to the close of the canvass period for the election.

43.8.11.4 Prior to the submission of certified results from the county, the county clerk and recorder shall provide a written report to the Secretary of State addressing the existence or absence of any security issues related to the implementation and operation of the voting system. All county documentation related to the voting system shall be available for inspection by the Secretary of State for all devices used in the election.

43.8.12 Any additional physical security procedures not discussed in these mandatory procedures shall be submitted to the Secretary of State for approval prior to the election.

43.9 The designated election official shall submit with the security plan sample copies of all referenced forms, schedules, logs, and checklists.

43.10 Included in the security procedures filed with the secretary of state shall be a section entitled "contingency plan." The contingency plan shall include:

- (a) Evacuation procedures for emergency situations including fire, bomb threat, civil unrest, and any other emergency situations identified by the designated election official;
- (b) Back up plans for emergency situations including fire, severe weather, bomb threat, civil unrest, electrical blackout, equipment failure, and any other emergency situations identified by the designated election official;
- (c) An emergency checklist for election judges; and
- (d) A list of emergency contact numbers provided to election judges.

Rule 44. Rules Regulating Voter Registration Drives

44.1 Statement of Intent

44.1.1 In accordance with section 1-2-701, C.R.S., *et seq.*, the organizer of a Voter Registration Drive ("VRD") shall file a Statement of Intent with the Secretary of State to

conduct a voter registration drive on a form prescribed by the Secretary of State. The Statement of Intent shall include the following information:

- (a) The name of the organization and the name of the parent organization, if applicable;
- (b) The contact information for the organization
- (c) The name of the agent (who is required to be a Colorado resident) and the contact information for that agent;
- (d) A statement specifying the counties in which the VRD intends to operate;
- (e) A notice that the voter registration drive number expires at the end of the calendar year; and
- (f) A signature line requiring the organizer's signature.

44.1.2 Any amendments to the Statement of Intent shall be filed in writing with the Secretary of State. Amendments may be made by fax, email, mail or in person.

- (a) Any amendments to the Statement of Intent concerning the county in which the VRD will conduct a drive shall be filed a minimum of three (3) business days prior to commencing voter registration activity in a given county.

44.1.3 The Secretary of State shall immediately attempt to verify the information provided in the Statement of Intent prior to issuing a number to the VRD organizer. The Secretary of State may deny a number to the voter registration drive organizer if the information provided on the Statement of Intent cannot be verified.

44.1.4 The last day for a VRD to file a Statement of Intent with the Secretary of State shall be thirty (30) days before the general election in a given calendar year.

44.2 Training

44.2.1 The organizer of the VRD shall, before commencing the distribution or circulation of voter registration applications, complete a training provided by the Secretary of State.

44.2.2 In addition to training for the organizer, the Secretary of State shall make available information for the organizer to train individual circulators. Organizers shall provide training to all circulators. Organizers shall obtain and maintain on file signed attestations from each circulator that he or she will adhere to all the requirements of the Secretary of State election rules and the Colorado Revised Statutes pertaining to elections, and that they are aware of the penalties associated with the mishandling of voter registration application forms. The organizers shall furnish the circulator attestations to the secretary of state upon request.

44.2.3 The mandatory training provided by the Secretary of State shall include but not be limited to:

- (a) The use of the standard Colorado Voter Registration Application Form;
- (b) Information on where to obtain the standard Voter Registration Application Form;
- (c) Information on how to ensure that a Form is filled out completely; including which

fields are optional and which are required, and how to fill out the receipt portion of the Form;

- (d) Notice of statutory deadlines relating to Voter Registration Applications Forms and voter registration drives;
- (e) The requirements for when and where the Voter Registration Applications Forms must be turned in;
- (f) Penalties for violating statutory prohibitions including fraud, intimidation, mishandling forms, failing to turn in forms and other penalties relevant to voter registration drives;
- (g) The handling and treatment of confidential information on the Voter Registration Application Forms; and
- (h) Notice that circulators shall not be paid per voter registration application, but if compensated, shall be paid by the hour or day.

44.2.4 After completing the training, the organizer shall sign an Acknowledgement that the training has been completed and that he or she has been duly informed of rules, laws and penalties relating to voter registration drives.

44.3 Number Assigned. After the organizer completes the required training, the Secretary of State shall assign a unique number to the VRD that meets the requirements of section 1-2-701, C.R.S., and this Rule. After issuing a unique number to the voter registration drive, the Secretary of State shall:

- (a) Advise the VRD organizer of the unique number;
- (b) Notify the county clerks within 24 hours of each registered voter registration drive registered with the Secretary of State; and
- (c) Post the organization's name and contact person on the SOS website.

44.4 Voter Registration Drive Voter Application Forms

44.4.1 The Secretary of State shall approve a standard Colorado Voter Registration Application Form to be used by the VRD that shall include a tear off receipt.

- (a) The VRD may also use the National Mail Voter Registration Form. Because the National Mail Voter Registration Form does not include a tear off receipt, the applicant and VRD are afforded greater protection when the standard Colorado form is used.

44.4.2 The Secretary of State and county clerks shall make available the official, approved Colorado Voter Registration Drive Application Forms to the VRD organizer

44.4.3 The organizer shall be responsible for placing the VRD number on the application form and the receipt portion of the standard Colorado form.

44.4.4 The person circulating the Voter Registration Application Forms shall ensure that the tear-off receipt on the standard Colorado Application is completed and given to the applicant. The person circulating the voter application forms shall advise the applicant that the receipt may be needed when he or she votes.

- 44.4.5 The VRD organizer is not eligible to receive standard Colorado Voter Registration Application Forms until the organizer has completed training, signed the statement of intent, completed and signed the Acknowledgement, and been assigned a number.
- 44.4.6 Any voter registration drive that provides a voter registration application on its website or a link to such voter registration form must direct the applicant to return the completed form directly to the county clerk and recorder of the applicant's legal residence. No voter registration drive may provide a voter registration form on its website or a link to such voter registration form which instructs or directs, in any way, the applicant to return the completed form to anyone or any group other than directly to the county clerk and recorder of the applicant's legal residence or, in the case of overseas electors or UOCAVA electors, the county clerk and recorder or the Secretary of State.

Rule 45. Rules Concerning Voting System Standards for Certification

- 45.1 Definitions The following definitions apply to their use in this rule only, unless otherwise stated.
- 45.1.1 "Audio ballot" means a voter interface containing the list of all candidates, ballot issues, and ballot questions upon which an eligible elector is entitled to vote at an election and that provides the voter with audio stimuli and allows the voter to communicate voting intent to the voting system through vocalization or physical actions.
- 45.1.2 "Audit log" means a system-generated record, in printed and/or electronic format, providing a record of activities and events relevant to initialization of election software and hardware, identification of files containing election parameters, initialization of the tabulation process, processing of voted ballots, and termination of the tabulation process.
- 45.1.3 "Ballot image" or "Ballot image log" means a corresponding representation in electronic form of the marks or vote positions of a cast ballot that are captured by a direct recording electronic voting device.
- 45.1.4 "Ballot style assignment" means the creation of unique, specific ballots for an election by the election management system based on criteria keyed into the system for districts, precincts, and races to create combinations of possibilities of races for individual voters based on their individual precincts.
- 45.1.5 "Closed network" means a network structure where devices are not connected to the internet or other office automation networks, except as allowable under section 45.5.2.7.
- 45.1.6 "Communications devices" means devices that may be incorporated in or attached to components of the voting system for the purpose of transmitting tabulation data to another data processing system, printing system, or display device.
- 45.1.7 "DRE" means a direct recording electronic voting device. A DRE is a voting device that records votes by means of a ballot display provided with mechanical or electro-optical components or an audio ballot that can be activated by the voter; that processes data by means of a computer program; and that records voting data and ballot images in memory components or other media. The device may produce a tabulation of the voting data stored in a removable memory component and as printed copy. The device may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from remote sites to the central location.
- 45.1.8 "EAC" means the United States Election Assistance Commission.

- 45.1.9 "Election media" means any device including a cartridge, card, memory device, or hard drive used in a voting system for the purposes of programming ballot image data (ballot or card styles), recording voting results from electronic vote tabulating equipment, or any other data storage needs required by the voting system for a particular election function. The election management system typically delivers (downloads) ballot style information to the election media and receives (uploads) cast ballot information in the form of a summary of results and ballot images.
- 45.1.10 "Equipment" or "device" means a complete, inclusive term to represent all items submitted for certification by the voting system provider. This can include, but is not limited to any voting device, accessory to voting device, DRE, touch screen voting device, card programming device software, and hardware, as well as a complete end to end voting system solution.
- 45.1.11 "FEC" means the Federal Election Commission.
- 45.1.12 "Remote site" means any physical location identified by a Designated Election Official as a location where the jurisdiction shall be conducting the casting of ballots for a given election. A remote site includes locations such as precinct polling places, vote centers, early voting, mail-in ballot counting, etc.
- 45.1.13 "Removable Storage Media" means any device that is intended to be removed that has the ability of storing or processing data for a voting system.
- 45.1.14 "Security" means the ability of a voting system to protect election information and election system resources with respect to confidentiality, integrity, and availability.
- 45.1.15 "Split Precinct" means a precinct that has a geographical divide between one or more political jurisdictions which may cause a unique ballot style to be created for a specific election.
- 45.1.16 "Test Log" means documentation of certification testing and processes which is independently reproducible to recreate all test scenarios conducted by the testing board. The log may include documentation such as: photographs, written notes, video and/or audio recorded notes.
- 45.1.17 "Trusted Build" means the write-once installation disk or disks for software and firmware for which the Secretary of State or his/her agent has established the chain of evidence to the building of a disk, which is then used to establish and/or re-establish the chain of custody of any component of the voting system which contains firmware or software. The trusted build is the origin of the chain of evidence for any software and firmware component of the voting system.
- 45.1.18 "VSTL" means a voting system testing laboratory that provides engineering, testing, or evaluation services for voting systems, and is qualified by the EAC to conduct qualification testing on a voting system.

45.2 Introduction

45.2.1 Definition of voting system for certification purposes

- 45.2.1.1 The definition of a voting system for the purposes of this rule shall be as the term is defined in HAVA section 301(b). For Colorado purposes, no single component of a voting system, such as a precinct tabulation device, meets the definition of a voting system.

45.2.1.2 Sufficient components shall be assembled to create a configuration that shall allow the system as a whole to meet the requirements as described for a voting system in this rule.

45.2.2 Authority

45.2.2.1 Pursuant to Articles 5 and 7 of Title 1, C.R.S., the Secretary of State is expressly authorized to adopt this rule.

45.2.3 Documents Incorporated by Reference

45.2.3.1 All documents incorporated by reference in this Rule 45 do not include any later amendments or editions of the document.

45.2.3.2 All documents incorporated by reference in this Rule 45 may be viewed on the "Voting Systems" page of the "Elections Center" on the Secretary of State website at www.sos.state.co.us, or by contacting the Secretary of State Voting Systems Specialist /1700 Broadway – Suite 270/Denver, CO 80290.

45.3 Certification Process Overview and Timeline

45.3.1 The voting system shall be considered as a unit, and all components of such system shall be tested at once, unless the circumstances necessitate otherwise (e.g. retrofitted V-VPATs, etc.). Any change made to individual components of a voting system shall require re-certification of the entire voting system in accordance with this rule.

45.3.2 For a voting system to pass certification the voting system provider shall successfully complete all phases of the certification process which shall include: submitting a complete application; review of the documentation to evaluate if the system meets the requirements of this rule; demonstration of the system; and functional testing of the voting system which shall demonstrate substantial compliance with the requirements of this rule, Colorado Election Code, and any additional testing that is deemed necessary by the Secretary of State.

45.3.3 The following milestones indicate the flow of the certification process – see timeline below:

(a) Phase I – 6 days maximum. Voting system provider submits application and Secretary of State reviews for completeness. Voting system provider shall have 30 days to remedy and make application complete.

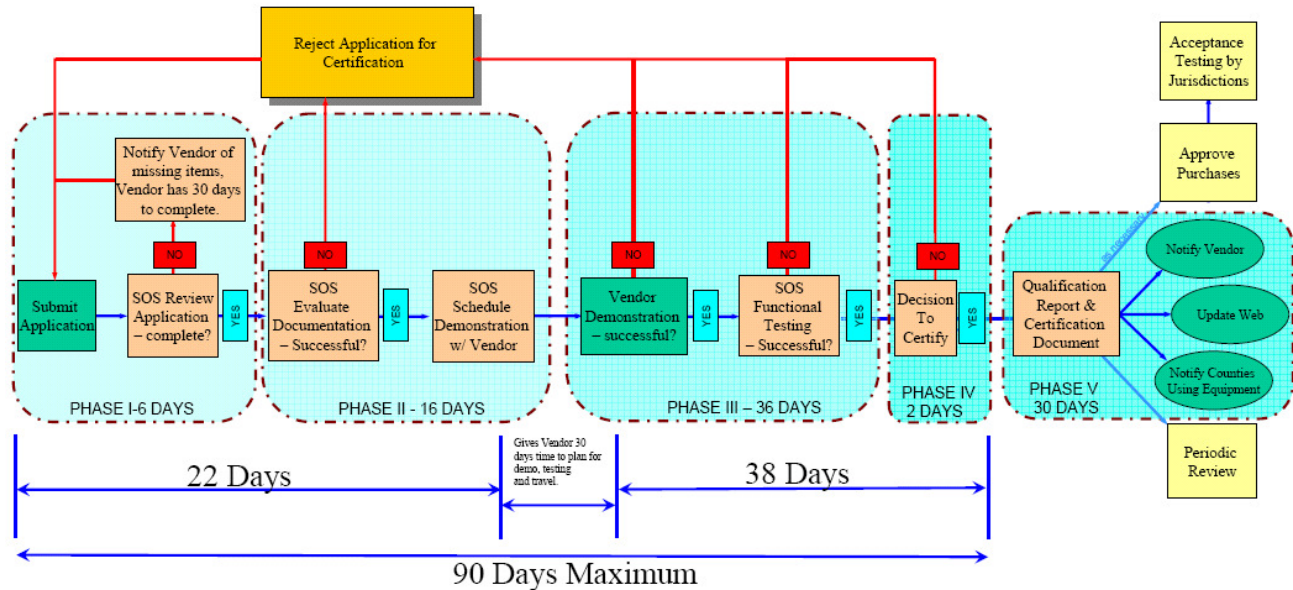
(b) Phase II – 16 Days maximum. Secretary of State reviews the documentation submitted and upon successful completion makes arrangements with voting system provider for demonstration.

(c) Phase III – 36 days maximum. When demonstration is complete, Secretary of State performs the functional testing.

(d) Phase IV – 2 days maximum. Upon completion of functional testing, Secretary of State makes a decision to certify a voting system and produces applicable certification document.

(e) Phase V – 30 days maximum. Upon decision to certify a voting system, Secretary of State shall produce a qualification report for the voting system and components certified, which shall be posted on the Secretary of State website.

Certification Program Overview and Timeline



45.4 Application Procedure

- 45.4.1 Any voting system provider may apply to the Secretary of State for certification at any time.
- 45.4.2 A voting system provider that submits a voting system for certification shall complete the Secretary of State's "Application for Certification of Voting System".
- 45.4.3 The voting system provider shall establish an escrow account pursuant to State procurement processes to compensate the Secretary of State for necessary outside costs associated with the testing of the system. The Secretary of State shall provide an estimate of costs for certification testing at the conclusion of Phase II evaluation.
- 45.4.4 Along with the application, the voting system provider shall submit all the documentation necessary for the identification of the full system configuration submitted for certification. This documentation shall include information that defines the voting system design, method of operation, and related resources. It shall also include a system overview and documentation of the voting system's functionality, accessibility, hardware, software, security, test and verification specifications, operations procedures, maintenance procedures, and personnel deployment and training requirements. In addition, the documentation submitted shall include the voting system provider's configuration management plan and quality assurance program.
- 45.4.5 Electronic copies of documentation are preferred and shall be submitted in lieu of a hard copy when possible.
- 45.4.6 If the EAC has established a trusted build for the system submitted for certification, the trusted build shall be provided by the EAC. The voting system provider shall execute and

submit to the EAC any necessary releases for the EAC to provide the same, and shall provide the Secretary of State's office with a copy of such executed releases. The voting system provider shall pay directly to the EAC any cost associated with same. In addition, the voting system provider shall submit all documentation and instructions necessary for the creation of and guided installation of files contained in the trusted build which will be created at the start of functional testing and will be the model tested against. The Secretary of State reserves the right to add additional instructions or guidance for the use of the trusted build when initiating the chain of custody process for a jurisdiction using the specified equipment.

45.4.7 If the EAC does not have a trusted build for the voting system submitted for certification, the voting system provider shall coordinate with the Secretary of State for the establishment of the trusted build. At a minimum this shall include a compilation of files placed on write-once media for which the Secretary of State has observed the chain of evidence from time of source code compilation through delivery, and an established hash file distributed from a VSTL or the National Software Reference Library to compare federally certified versions against. All or any part of the Trusted Build disks may be encrypted. They should all be labeled as Proprietary Information if applicable and with identification of the voting system provider's name and release version based on the voting system provider's release instructions.

45.4.8 All materials submitted to the Secretary of State shall remain in the custody of the Secretary of State during the life of the certification and for twenty-five (25) months after the last election in which the system is used with the exception of any equipment provided by the voting system provider to purposes of testing.

45.4.9 In addition to the application and the documentation specified above, the Secretary of State may request additional information from the applicant, as deemed necessary by the Secretary of State.

45.5 Voting System Standards

45.5.1 Federal Standards

45.5.1.1 All voting systems shall meet the voting systems standards pursuant to section 1-5-601.5, C.R.S., and Secretary of State Rule 37.3.

45.5.1.2 All voting system software, hardware, and firmware shall meet all requirements of federal law that address accessibility for the voter interface of the voting system. These laws include, but are not necessarily limited to, (a) the Help America Vote Act, (b) the Americans with Disabilities Act, and (c) the Federal Rehabilitation Act. The voting system provider shall acknowledge explicitly that their proposed software, hardware, and firmware are all in compliance with the relevant accessibility portions of these laws.

45.5.1.3 The Secretary of State or his/her designee shall review all of the documentation submitted from federal testing for compliance with applicable laws and regulations. Documentation of tests completed at the federal level may be used for compliance of duplicate State level requirements; however compliance with federal standards does not necessarily establish compliance with Colorado standards.

45.5.2 State Standards

45.5.2.1 Functional requirements

- 45.5.2.1.1 Functional requirements shall address any and all detailed operations of the voting system related to the management and controls required to successfully conduct an election on the voting system.
- 45.5.2.1.2 The voting system shall provide for appropriately authorized users to:
- (a) Prepare the system for an election;
 - (b) Setup and prepare ballots for an election;
 - (c) Lock and unlock system to prevent or allow changes to ballot design;
 - (d) Conduct hardware and diagnostics testing as required herein;
 - (e) Conduct logic and accuracy testing as required herein;
 - (f) Conduct an election and meet additional requirements as identified in this section for procedures for voting, auditing information, inventory control, counting ballots, opening and closing polls, recounts, reporting, and accumulating results as required herein;
 - (g) Conduct the post election audit as required herein; and
 - (h) Preserve the system for future election use.
- 45.5.2.1.3 The voting system shall accurately integrate election day voting results with mail-in, early voting and provisional ballot results.
- 45.5.2.1.4 The voting system shall be able to count all of an elector's votes on a provisional ballot or only federal and statewide offices and statewide ballot issues and questions, as provided under section 1-8.5-108(2), C.R.S.
- 45.5.2.1.5 The voting system shall provide for the tabulation of votes cast in split precincts where all voters residing in one precinct are not voting the same ballot style.
- 45.5.2.1.6 The voting system shall provide for the tabulation of votes cast in combined precincts at remote sites, where more than one precinct is voting at the same location, on either the same ballot style or a different ballot style.
- 45.5.2.1.7 The voting system application shall provide authorized users with the capability to produce electronic files including election results in either ASCII (both comma-delimited and fixed-width) or web-based format that shall contain (a) all data or (b) any user selected data elements from the database. The software shall provide authorized users with the ability to generate these files on an "on-demand" basis. After creating such files, the authorized users shall, at their discretion, have the capability to

copy the files to diskette, tape, or CD-ROM or to transmit the files to another information system.

- (a) Exports necessary for the Secretary of State shall conform to an agreed upon format.
- (b) Export files shall be generated so that election results can be communicated to the Secretary of State on election night both during the accumulation of results and after all results have been accumulated.

45.5.2.1.8 The voting system shall include hardware and software to enable the closing of the remote voting location and disabling acceptance of ballots on all vote tabulation devices to allow for the following:

- (a) Machine-generated paper record of the time the voting system was closed.
- (b) Readings of the public counter and protective counter shall become a part of the paper audit record upon disabling the voting system to prevent further voting.
- (c) Ability to print an abstract of the count of votes which shall contain:
 - (i) Names of the offices;
 - (ii) Names of the candidates and party when applicable;
 - (iii) A tabulation of votes from ballots of different political parties at the same voting location in a primary election;
 - (iv) Ballot titles;
 - (v) Submission clauses of all initiated, referred or other ballot issues or questions; and
 - (vi) The number of votes counted for or against each candidate or ballot issue.
- (d) Abstract shall include an election judge's certificate and statement that contains:
 - (i) Date of election (day, month and year);
 - (ii) Precinct Number (ten digit format);
 - (iii) County or Jurisdiction Name;
 - (iv) State of Colorado;
 - (v) Count of votes as indicated in this section; and

(vi) Area for judge's signature with the words similar to: "Certified by us", and "Election Judges". Space should allow for a minimum of two signatures.

(e) Votes counted by a summary of the voting location, and by individual precincts.

(f) Ability to produce multiple copies of the unofficial results at the close of the election.

(g) Ability to accommodate a two page ballot (races on four faces) is required.

45.5.2.1.9 Voters voting on DRE devices shall be able to navigate through the screens without the use of page scrolling. Features such as next or previous page options shall be used.

45.5.2.1.10 The voting system application shall ensure that an election setup may not be changed once ballots are printed and/or election media devices are downloaded for votes to be conducted without proper authorization and acknowledgement by the application administrative account. The application and database audit transaction logs shall accurately reflect the name of the system operator making the change(s), the date and time of the change(s), and the "old" and "new" values of the change(s).

45.5.2.2 Performance Level

45.5.2.2.1 Performance Level shall refer to any operation related to the speed and efficiency required from the voting system to accomplish the successful conduct of an election on the voting system.

45.5.2.2.2 The voting system shall meet the following minimum requirements for casting ballots during functional testing for certification. Speed requirements are based on a printed double sided complete 18" ballot with a minimum of 20 contests:

(a) Optical Scan Ballots at voting location(s) = 100 ballots per hour;

(b) DRE / Touch Screen = 20 ballots per hour; and

(c) Central Count Optical Scan Ballots = 100 ballots per hour.

45.5.2.2.3 The voting system provider shall publish and specify processing standards for each component of the voting system as part of the documentation required for certification.

45.5.2.2.4 For the purposes of evaluating software, the voting system provider shall be required to provide detailed information as to the type of hardware required to execute the software. The performance level shall be such that an evaluator of the software would have pauses equal to less than five (5) seconds in the system during the ballot design and creation, along with the

downloading and uploading of election media devices. Specifically, the following minimum standards are required:

- (a) Ballot style initial layout is less than 10 seconds per ballot style;
- (b) Election Media Download for vote storage media without audio files is less than 35 seconds per media;
- (c) Election Media Upload is less than 20 seconds per media; and
- (d) The application software upon creation of the layout of the races on ballot shall produce the ballot image (on screen) for the evaluator in less than thirty (30) seconds per ballot image.

45.5.2.2.5 At no time shall third party hardware or software negatively impact performance levels of voting system application, unless a voting system provider specifically details through documentation the specific hardware or software, the performance impact, and a workaround for the end user to overcome the issue.

45.5.2.3 Physical and Design Characteristics

45.5.2.3.1 Physical and design characteristics shall address any and all external or internal construction of the physical environment of the voting system, or the internal workings of the software necessary for the functioning of the voting system. The voting system shall substantially comply with these requirements to be considered successful in the conduct of an election on the voting system.

45.5.2.3.2 The voting system shall meet the following environmental controls allowing for storage and operation in the following physical ranges:

- (a) Operating – Max. 95 Degrees Fahrenheit; Min 50 Degrees Fahrenheit, with max. humidity of 90%, normal or minimum operating humidity of 15%.
- (b) Non-Operating – Max. 140 Degrees Fahrenheit; Min. 4 Degrees Fahrenheit. Non-operating humidity ranges from 5% to 90% for various intervals throughout the day.

The material supplied by the voting system provider shall include a statement of all requirements and restrictions regarding environmental protection, electrical service, telecommunications service, and any other facility or resource required for the installation, operation, and storage of the voting system.

45.5.2.3.3 The ballot definition subsystem of the voting system application consists of hardware and software required to accomplish the functions outlined in this section 45.5.2.3. System databases contained in the Ballot Definition Subsystem may be constructed

individually or they may be integrated into one database. These databases are treated as separate databases to identify the necessary types of data that shall be handled and to specify, where appropriate, those attributes that can be measured or assessed for determining compliance with the requirements of this standard.

- 45.5.2.3.4 The Ballot Definition Subsystem shall be capable of formatting ballot styles in English and any alternate languages as are necessary to comply with The "Voting Rights Act of 1965" 42 U.S.C. § 1973c et seq. (1965).
- 45.5.2.3.5 The voting system application shall allow the operator to generate and maintain an administrative database containing the definitions and descriptions of political subdivisions and offices within the jurisdiction.
- 45.5.2.3.6 The ballot definition subsystem shall provide for the definition of political and administrative subdivisions where the list of candidates or contests may vary within the remote site and for the activation or exclusion of any portion of the ballot upon which the entitlement of a voter to vote may vary by reason of place of residence or other such administrative or geographical criteria. This database shall be used by the system with the administrative database to format ballots or edit formatted ballots within the jurisdiction.
- 45.5.2.3.7 For each election, the subsystem shall allow the user to generate and maintain a candidate and contest database and provide for the production and/or definition of properly formatted ballots and software.
- 45.5.2.3.8 The ballot definition subsystem shall be capable of handling at least 500 potentially active voting positions, arranged to identify party affiliations in a primary election, offices and their associated labels and instructions, candidate names and their associated labels and instructions, and ballot issues or questions and their associated text and instructions.
- 45.5.2.3.9 The ballot display may consist of a matrix of rows or columns assigned to political parties or non-partisan candidates and columns or rows assigned to offices and contests. The display may consist of a contiguous matrix of the entire ballot or it may be segmented to present portions of the ballot in succession.
- 45.5.2.3.10 The voting system application shall provide a facility for the definition of the ballot, including the definition of the number of allowable choices for each office and contest, and for special voting options such as write-in candidates. It shall provide for all voting options and specifications as provided for in Articles 5 and 7, Title 1, C.R.S. The system shall generate all required masters and distributed copies of the voting program in conformance with the definition of the ballot for each voting device and remote site. The distributed copies, resident or installed in each voting device, shall include all software modules required to: monitor system status and generate machine-level audit reports,

accommodate device control functions performed by remote location officials and maintenance personnel, and register and accumulate votes.

- 45.5.2.3.11 The trusted build of the voting system software, installation programs, and third party software (such as operating systems, drivers, etc.) used to install or to be installed on voting system devices shall be distributed on a write-once media.
- 45.5.2.3.12 The voting system shall allow the system administrative account to verify that the software installed is the certified software by comparing it to the trusted build or other reference information.
- 45.5.2.3.13 All DRE voting devices shall use touch screen technology or other technology providing visual ballot display and selection. The voting system provider shall provide documentation concerning the use of touch screen or other display and selection technology, including but not limited to:
 - (a) Technical documentation describing the nature and sensitivity of the tactile device (if the system uses touch screen technology);
 - (b) Technical documentation describing the nature and sensitivity of any other technology used to display and select offices, candidates, or issues;
 - (c) Any mean time between failure (MTBF) data collected on the vote recording devices; and
 - (d) Any available data on problems caused for persons who experience epileptic seizures due to the DRE voting devices' screen refresh rate.
- 45.5.2.3.14 The voting system shall contain a control subsystem that consists of the physical devices and software that accomplish and validate the following operations:
 - (a) Voting System Preparation - The control subsystem shall encompass the hardware and software required to prepare remote location voting devices and memory devices for election use. Remote site preparation includes all operations necessary to install ballot displays, software, and memory devices in each voting device. The control subsystem shall be designed in such a manner as to facilitate the automated validation of ballot and software installation and to detect errors arising from their incorrect selection or improper installation.
 - (b) Error Detection – the voting system shall contain a detailed list and description of the error messages that will appear on the voting devices, the controller (if any), the paper ballot printer, programmer, or any other device used in the voting process to indicate that a component has failed or is malfunctioning.

- 45.5.2.3.15 The voting system shall have a high level of integration between the ballot layout subsystem and the vote tabulation subsystem. This integration shall permit and facilitate the automatic transfer of all ballot setup information from the automated ballot layout module to the single ballot tabulation system that will be used in a fully integrated manner for DRE, optical scan, and any other voting devices included in the voting system.
- 45.5.2.3.16 The processing subsystem contains all mechanical, electromechanical, and electronic devices required to perform the logical and numerical functions of interpreting the electronic image of the voted ballot and assigning votes to the proper memory registers. Attributes of the processing subsystem that affect its suitability for use in a voting system, are accuracy, speed, reliability, and maintainability.
- (a) Processing accuracy refers to the ability of the subsystem to receive electronic signals produced by vote marks and timing information, to perform logical and numerical operations upon these data, and to reproduce the contents of memory when required without error. Processing subsystem accuracy shall be measured as bit error rate, which is the ratio of uncorrected data bit errors to the number of total data bits processed when the system is operated at its nominal or design rate of processing in a time interval of four (4) hours. The bit error rate shall include all errors from any source in the processing subsystem. For all types of systems, the Maximum Acceptable Value (MAV) for this error rate shall be one (1) part in five hundred thousand (500,000) ballot positions, and the Nominal Specification Value (NSV) shall be one (1) part in ten million (10,000,000) ballot positions.
- (b) Memory devices that are used to retain control programs and data shall have demonstrated at least a ninety-nine and a half (99.5) percent probability of error-free data retention for a period of six months for operation and non-operation.
- 45.5.2.3.17 The reporting subsystem contains all mechanical, electromechanical, and electronic devices required to print reports of the tabulation. The subsystem also may include data storage media and communications devices for transportation or transmission of data to other sites. Telecommunications Devices shall not be used for the preparation or printing of an official canvass of the vote unless they conform to a data interchange and interface structure and protocol that incorporates auditing and error check as required by 45.5.2.7.
- 45.5.2.3.18 The approach to design shall be unrestricted, and it may incorporate any form or variant of technology that is capable of meeting the requirements of this rule, and other attributes specified herein. The frequency of voting system malfunctions and maintenance requirements shall be reduced to the lowest level consistent with cost constraints. Applicants are required to meet or exceed MIL-HDBK-454; "Standard General

Requirements for Electronic Equipment" that is hereby adopted and incorporated by reference, as a guide in the selection and application of materials and parts only as is relevant to this section.

45.5.2.3.19 All electronic voting devices provided by the voting system provider shall have the capability to continue operations and provide continuous device availability during a period of electrical outage without any loss of election data.

(a) For optical scan devices, this capability shall include at a minimum for a period of not less than three (3) hours the ability to:

- (i) Continue to scan or image voters' ballots;
- (ii) Tabulate accurately voters' choices from the ballots;
- (iii) Store accurately voters' ballot choices during a period of electrical outage; and
- (iv) Transmit required results files accurately if power failure experienced during transmittal of results.

(b) For DRE devices, this capability shall include at a minimum for a period of not less than three (3) hours the ability to:

- (i) Continue to present ballots accurately to voters;
- (ii) Accept voters' choices accurately on the devices;
- (iii) Tabulate voters' choices accurately;
- (iv) Store voters' choices accurately in all storage locations on the device; and
- (v) Transmit required results files accurately if power failure is experienced during transmittal of results.

(c) For V-VPAT devices connected to DREs, this capability shall include at a minimum for a period of not less than three (3) hours the ability to:

- (i) Continue to print voters' choices on the DRE accurately and in a manner that is identical to the manner of the printers' operations during a period of normal electrical operations; and
- (ii) Continue to store the printed ballots in a secure manner that is identical to the manner of the printers' operations during a period of normal electrical operations.

- (d) The voting system provider shall deliver to the Secretary of State documentation detailing estimated time of operation on battery for each type of optical scanner, ballot imager, DRE, and V-VPAT they provide, assuming continuous use of the devices by voters during an interruption of normal electrical power.
- (e) The voting system provider shall deliver to the Secretary of State documentation specifying the steps and times required for charging batteries for each type of optical scanner, ballot imager, DRE and V-VPAT they provide.

45.5.2.3.20 The voting system provider's software application shall be able to recover operations after a power outage or other abnormal shutdown of the system on which that application and database are operating without loss of more than the current transaction data record on which the administrative account or authorized operator account is currently working.

45.5.2.3.21 The voting system shall provide capabilities to enforce confidentiality of voters' ballot choices.

- (a) All optical scan devices, associated ballot boxes and V-VPAT storage devices shall provide physical locks and procedures to prevent disclosure of voters' confidential ballot choices during and after the vote casting operation.
- (b) All DRE devices shall provide randomization of all voter choices and stored, electronic ballot information, regardless of format, to prevent disclosure of voters' confidential ballot choices during and after storage of the voters' ballot selections.

45.5.2.3.22 The voting system and all associated components shall have an estimated useful life of at least eight (8) years. Voting system provider shall provide documentation of the basis for the estimate.

45.5.2.3.23 The voting system provider shall submit drawings, photographs, and any related brochure documents to assist with the evaluation of the physical design of the use of the voting system.

45.5.2.4 Documentation Requirements

45.5.2.4.1 In addition to other documentation requirements in this rule, the voting system provider shall provide the following documents:

- (a) Standard Issue Users/Operator Manual;
- (b) System Administrator's / Application Administration Manual;
- (c) Training Manual (and materials);
- (d) Systems Programming and Diagnostics Manuals; and

- (e) A list of minimum services needed for successful, secure and hardened operation of all components of voting system.

45.5.2.4.2 All VSTL qualification reports, test logs, and technical data packages shall be evaluated to determine if the voting system meets the requirements of this rule and have completed the applicable federal certification requirements at the time of State testing. Failure to provide such documentation of independent testing will result in the voting system application being rejected.

- (a) The voting system provider shall execute and submit any necessary releases for the applicable VSTL and/or EAC to discuss any and all procedures and findings relevant to the voting system submitted for certification with the Secretary of State's office. The voting system provider shall provide a copy of the same to the Secretary of State's office.

45.5.2.4.3 All voting system providers submitting a voting system for certification after March 31, 2008, shall, prior to applying for certification, have completed and provided documentation of an independent analysis of the system coordinated through the Secretary of State's office. The independent analysis shall include:

- (a) Application penetration test conducted to OSSTMM 2.2 standards for White or Double Gray box testing;
- (b) Source code evaluated to the requirements identified in 45.5.2.6.1(f);
- (c) A complete review of the source code for these two tests shall be provided as part of the certification process;
- (d) A complete report of acceptable compensating controls shall be provided with the tests conducted for items (a) and (b) of this section.
 - (i) Inability for the voting system provider to provide acceptable compensating controls will require a retest of the system under this section until all compensating controls have a valid procedural mitigation strategy.
- (e) The vendor shall use an EAC approved VSTL to perform the independent analysis;
- (f) The Secretary of State or the designated agent shall review all work performed by contractor for quality of work product under this section. The review may include any or all of the following requirements:
 - (i) Review of records at contractors' site;

- (ii) Interviews of employees who performed the work; and
 - (iii) Interviews of any subcontractors used.
 - (g) The Secretary of State has the right to reject evaluations performed if not satisfied with the work product and may request additional reviews of the voting system provider.
- 45.5.2.4.4 Documentation submitted to the Secretary of State shall be reviewed to ensure the voting system has been tested to federal standards.
- (a) Voting System providers shall provide the Secretary of State with their documented project plans for modifying their voting systems to comply with and achieve certification under the EAC's adopted 2005 Voluntary Voting System Guidelines by January 1, 2008 if not currently tested and certified to that standard at time of applying for certification.
- 45.5.2.4.5 Failure by the voting system provider to provide any documentation within the timelines established in this rule shall delay the certification process for the specific application.
- 45.5.2.5 Audit capacity
- 45.5.2.5.1 The voting system shall be capable of producing electronic and printed audit logs of system operation and system operators actions which shall be substantially compliant to allow operations and input commands to be audited.
- 45.5.2.5.2 The voting systems shall include detailed documentation as to the level, location, and programming of audit trail information throughout the system. The audit information shall apply to:
- (a) Operating Systems (workstation, server, and/or DRE);
 - (b) Election Programming Software;
 - (c) Election Tabulation devices – optical scan and DRE; and
 - (d) Election Result Consolidation and Reporting.
- 45.5.2.5.3 The voting system shall track and maintain audit information of the following voting system application events:
- (a) Log on and log off activity;
 - (b) Application start and stop;
 - (c) Printing activity (where applicable);
 - (d) Election events – setup, set for election, unset for election, open polls, close polls, end election, upload devices,

download devices, create ballots, create precincts, create districts, create poll places (or Vote Centers), initialize devices, backup devices, and voting activity; and

- (e) Hardware events – add hardware, remove hardware, initialize hardware, and change hardware properties.

45.5.2.5.4 All tabulation devices shall display the unit serial number(s) both physically and within any applicable software, logs, or reports.

45.5.2.5.5 Vote tabulation devices shall allow for an alternate method of transfer of audit records if the device or a memory storage device is damaged or destroyed.

45.5.2.5.6 All transaction audit records of the voting system application database shall be maintained in a file outside or separate from the database, which is not accessible by user/operator accounts.

45.5.2.6 Security Requirements

45.5.2.6.1 All voting systems submitted for certification shall meet the following minimum system security requirements:

- (a) The voting system shall accommodate a general system of access by least privilege and role based access control. The following requirements shall apply:

- (i) The operating system Administrative Account shall not have access to read or write data to the database and shall not have the ability or knowledge of the database administrator password;

- (ii) The operating system administrative account shall not be required to use any function of the voting system during normal operations;

- (iii) A unique system user/operator account shall be created for operating system use that is restricted from the following aspects of the operating system:

- a. No access to system root directory;
- b. No access to operating system specific folders;
- c. No access to install or remove programs; and
- d. No access to modify other user accounts on the system.

- (iv) A unique application administrative account shall be created which has full access and rights to the application and database;
 - (v) A unique application user/operator account shall be created with limited rights specifically designed to perform functional operation within the scope of the application. This user/operator shall be restricted in the creation or modification of any user/operator accounts; and
 - (vi) Voting system provider shall not have administrative account, or administrative account access.
- (b) The voting system shall meet the following requirements for network security:
- (i) All components of the voting system shall only be operated on a closed network only for the use of the voting system;
 - (ii) All components of the voting system shall include the limited use of non-routable IP address configurations for any device connected to the closed network. For the purposes of this requirement non-routable IP addresses are those defined in the RFC 1918 Address base; and
 - (iii) The voting system shall be tested to contain provisions for updating security patches, software and/or service packs without access to the open network.
- (c) All voting systems submitted for certification after March 31, 2008, shall meet the following requirements for database security:
- (i) All voting systems submitted for certification using Oracle 9i, Oracle 10g, or Microsoft SQL shall be hardened to the existing and published NSA guidelines for databases as follows:
 - a. Oracle 9i and Oracle 10g databases shall be hardened to the Center for Internet Security Benchmark for Oracle 9i/10g Ver. 2.0;
 - b. Microsoft SQL databases shall be hardened to the NSA Guide to the Secure Configuration and Administration of Microsoft SQL Server 2000.
 - (ii) All other voting system databases submitted for certification shall have the voting systems

databases hardened to database manufacturer's existing hardening requirements; or

- (iii) If the manufacturer has not established requirements for the specifically designed system, the voting systems submitted for certification shall have the voting systems databases hardened to the voting system providers' specifications.
 - (iv) All voting systems submitted for certification shall have all voting systems databases restricted to allowing access to database authentication from application only (or through application only);
 - (v) All data stored at rest in any voting system database shall be encrypted in accordance with section (vi) of this requirement; and
 - (vi) All Cryptography modules shall be documented by the voting system provider to be certified to US Federal Information Processing Standard (FIPS-140-2), and validated to FIPS 180 standards.
- (d) The voting system shall meet the following requirements for operating system security:
- (i) All voting systems being submitted for certification after March 31, 2008, shall have all operating systems hardened to NSA guidelines for operating systems as follows:
 - a. Apple Mac OS X systems shall be hardened to the NSA Apple Mac OS X v10.3.x "Panther" Security Configuration Guide Version 1.1;
 - b. Apple Server Operating Systems shall be hardened to the NSA Apple Mac OS X Server v10.3.x "Panther" Security Configuration Guide;
 - c. Microsoft Windows XP Operating systems shall be hardened to the NSA Windows XP Security Guide Version: 2.2 and the NSA Windows XP Security Guide Addendum Version 1.0;
 - d. Microsoft Windows 2000 operating systems shall be hardened to the following NSA Guides:
 - i. Guide to the Secure Configuration and Administration of Microsoft Internet Information Services 5.0 Version 1.4;

- ii. Guide to the Secure Configuration and Administration of Microsoft ISA Server 2000 Version 1.5;
- iii. Guide to Securing Microsoft Windows 2000 Active Directory Version 1.0;
- iv. Guide to the Secure Configuration and Administration of Microsoft Windows 2000 Certificate Services Version 2.1.1;
- v. Guide to Securing Microsoft Windows 2000 DHCP Version 1.3;
- vi. Guide to Securing Microsoft DNS Version 1.0;
- vii. Guide to Securing Microsoft Windows 2000 Encrypting File System Version 1.0;
- viii. Guide to Securing Microsoft Windows 2000 File and Disk Resources Version 1.0.1;
- ix. Guide to securing Microsoft Windows 2000 Group Policy Version 1.1;
- x. Group Policy Reference Version 1.0.8;
- xi. Guide to Securing Microsoft Windows 2000 Group Policy: Security Configuration Tool Set Version 1.2.1;
- xii. Microsoft Windows 2000 IPSec Guide Version 1.0;
- xiii. Guide to Windows 2000 Kerberos Settings Version 1.1;
- xiv. Microsoft Windows 2000 Network Architecture Guide Version 1.0;
- xv. Microsoft Windows 2000 Router Configuration Guide Version 1.02;
- xvi. Guide to Securing Microsoft Windows 2000 Schema Version 1.0;
- xvii. Guide to Securing Microsoft Windows 2000 Terminal Services Version 1.0; and

xviii. Guide to Securing Windows NT/9x Clients in a Windows 2000 Network Version 1.0.2;

- e. Microsoft Windows Server 2003 operating systems shall be hardened to the NSA Microsoft Windows Server 2003 Security Guide Version 2.1 and The Microsoft Windows Server 2003 Security Guide Addendum Version 1.0;
 - f. Sun Solaris 8 operating systems shall be hardened to the NSA Guide to the Secure Configuration of Solaris 8 Version 1.0; and
 - g. Sun Solaris 9 operating systems shall be hardened to the NSA Guide to the Secure Configuration of Solaris 9 Version 1.0.
- (ii) All other voting system operating systems submitted for certification after March 31, 2008, shall have all operating systems hardened to existing manufacturer's hardening requirements; or
 - (iii) If the manufacturer has not established requirements for the specifically designed system, all voting systems being submitted for certification after March 31, 2007 shall have all operating systems hardened to the voting system providers' specifications;
 - (iv) The voting system provider shall provide documentation containing a list of minimum services and executables that are required to run the voting system application;
 - (v) The voting system provider shall configure the voting system operating system of the workstation and/or server used for the election management software to the following requirements:
 - a. The ability for the system to take an action upon inserting a removable media (Autorun) shall be disabled; and
 - b. The voting system shall only boot from the drive or device identified as the primary drive. The voting system shall not boot from any alternative device.
 - (vi) The voting system provider shall use a virus protection/prevention application on the election management server(s) /workstations which shall

be capable of manual updates without the use of the internet.

- (e) The voting system shall meet the following requirements for password security:
 - (i) All passwords shall be stored and used in a non-reversible format;
 - (ii) Passwords to database shall not be stored in database;
 - (iii) Password to database shall be owned and known only known by the application;
 - (iv) The application's database management system shall require separate passwords for the administrative account and each operator account with access to the application;
 - (v) The system shall be designed in such a way that the use of the administrative account password shall not be required for normal operating functions at any remote location;
 - (vi) The system shall be designed in such a way to facilitate the changing of passwords for each election cycle;
 - (vii) The use of blank or empty passwords shall not be permitted at any time with the exception of a limited one-time use startup password which requires a new password to be assigned before the system can be used; and
 - (viii) All voting systems submitted for certification after March 31, 2008, shall have all components of voting system capable of supporting passwords of a minimum of 8 characters, which shall be capable of including numeric, alpha and special characters in upper case or lower case used in any combination.
- (f) All voting system software submitted for certification after March 31, 2008, shall be in compliance with known software coding standards applicable to the base language of the application. The voting system shall meet the following minimum requirements for software security:
 - (i) Self-modifying, dynamically loaded or interpreted code is prohibited, except under the security provisions required by federal testing. External modification of code during execution shall be prohibited. Where the development environment (programming language and development tools)

includes the following features, the software shall provide controls to prevent accidental or deliberate attempts to replace executable code:

- a. Unbounded arrays or strings (includes buffers used to move data);
- b. Pointer variables; and
- c. Dynamic memory allocation and management.

(ii) All voting systems submitted for certification after March 31, 2008, shall have application software designed in a modular fashion. COTS software is not required to be inspected for compliance with this requirement. For the purpose of this requirement, "modules" may be compiled or interpreted independently. Modules may also be nested. The modularity rules described here apply to the component sub-modules of a library. The principle to be followed is that the module contains all the elements to compile or interpret successfully and has limited access to data in other modules. The design concept is simple replacement with another module whose interfaces match the original module. All modules shall be designed in accordance with the following requirements for systems submitted for certification after March 31, 2008:

- a. Each module shall have a specific function that can be tested and verified independently of the remainder of the code. In practice, some additional modules (such as library modules) may be needed to compile the module under test, but the modular construction allows the supporting modules to be replaced by special test versions that support test objectives.
- b. Each module shall be uniquely and mnemonically named, using names that differ by more than a single character. In addition to the unique name, the modules shall include a set of header comments identifying the module's purpose, design, conditions, and version history, followed by the operational code. Headers are optional for modules of fewer than ten executable lines where the subject module is embedded in a larger module that has a header containing the header information. Library modules shall also have a header comment describing the purpose of the library and version information.

- c. All required resources, such as data accessed by the module, should either be contained within the module or explicitly identified as input or output to the module. Within the constraints of the programming language, such resources shall be placed at the lowest level where shared access is needed. If that shared access level is across multiple modules, the definitions should be defined in a single file (called header files in some languages, such as C) where any changes can be applied once and the change automatically applies to all modules upon compilation or activation.
- d. Each module shall have a single entry point, and a single exit point, for normal process flow. For library modules or languages such as the object-oriented languages, the entry point is to the individual contained module or method invoked. The single exit point is the point where control is returned. At that point, the data that is expected as output shall be appropriately set. The exception for the exit point is where a problem is so severe that execution cannot be resumed. In this case, the design shall explicitly protect all recorded votes and audit log information and shall implement formal exception handlers provided by the language.
- e. Process flow within the modules shall be restricted to combinations of the control structures defined below. This shall apply to any language feature where program control passes from one activity to the next, such as control scripts, object methods or sets of executable statements, even though the language itself is not procedural.
 - i. In the constructs, any 'process' may be replaced by a simple statement, a subroutine or function call, or any of the control constructs.
 - ii. Using the replacement rule to replace one or both of the processes in the Sequence construct with other Sequence constructs, a large block of sequential code may be formed. The entire chain is recognized as a Sequence construct and is sometimes called a BLOCK construct. Sequences shall be marked with special symbols or punctuation to delimit where it starts and where it ends.

- iii. A special case of the GENERAL LOOP is the FOR loop. The FOR loop may be programmed as a DO-WHILE loop. The FOR loop shall execute on a counter. The control FOR statement shall define a counter variable or variables, a test for ending the loop, and a standard method of changing the variable(s) on each pass such as incrementing or decrementing.
- iv. The use of the FOR loop shall avoid common errors such as a loop that never ends. The GENERAL LOOP shall not be used where one of the other loop structures will serve. However, if defined in the language, it may be useful in defining some loops where the exit needs to occur in the middle. Also, in other languages the GENERAL LOOP logic may be used to simulate the other control constructs. The use of the GENERAL LOOP shall require the strict enforcement of coding conventions to avoid problems.
- v. The voting system software code shall use uniform calling sequences. All parameters shall either be validated for type and range on entry into each unit or the unit comments shall explicitly identify the type and range for the reference of the programmer and tester. Validation may be performed implicitly by the compiler or explicitly by the programmer.
- vi. The voting system software code shall have the return explicitly defined for callable units such as functions or procedures (do not drop through by default) for C-based languages and others to which this applies, and in the case of functions, shall have the return value explicitly assigned. Where the return is only expected to return a successful value, the C convention of returning zero shall be used. If an uncorrected error occurs so the unit shall return without correctly completing its objective, a non-zero return value shall be given even if there is no expectation of testing the return. An exception may be made where the return value of the function has a data range including zero.

- vii. The voting system software code shall not use macros that contain returns or pass control beyond the next statement.
- viii. For those languages with unbound arrays, the voting system software shall provide controls to prevent writing beyond the array, string, or buffer boundaries.
- ix. For those languages with pointers or which provide for specifying absolute memory locations, the voting system software shall provide controls that prevent the pointer or address from being used to overwrite executable instructions or to access inappropriate areas where vote counts or audit records are stored.
- x. For those languages supporting case statements, the voting system software shall have a default choice explicitly defined to catch values not included in the case list.
- xi. The voting system software shall provide controls to prevent any vote counter from overflowing. An assumption that the counter size is large enough such that the value will never be reached does not meet this requirement.
- xii. The voting system software code shall be indented consistently and clearly to indicate logical levels.
- xiii. Excluding code generated by commercial code generators, the voting system software code is written in small and easily identifiable modules, with no more than 50% of all modules exceeding 60 lines in length, no more than 5% of all modules exceeding 120 lines in length, and no modules exceeding 240 lines in length. "Lines" in this context, are defined as executable statements or flow control statements with suitable formatting and comments.
- xiv. Where code generators are used, the voting system software source file segments provided by the code generators shall be marked as such with comments defining the logic invoked and, a copy of the source code provided

to the accredited test lab with the generated source code replaced with an unexpanded macro call or its equivalent.

- xv. The voting system software shall have no line of code exceeding 80 columns in width (including comments and tab expansions) without justification.
- xvi. The voting system software shall contain no more than one executable statement and no more than one flow control statement for each line of source code.
- xvii. In languages where embedded executable statements are permitted in conditional expressions, the single embedded statement may be considered a part of the conditional expression. Any additional executable statements should be split out to other lines.
- xviii. The voting system software shall avoid mixed-mode operations. If mixed mode usage is necessary, then all uses shall be identified and clearly explained by comments.
- xix. Upon exit() at any point, the voting system software shall present a message to the operator indicating the reason for the exit().
- xx. The voting system software shall use separate and consistent formats to distinguish between normal status and error or exception messages. All messages shall be self-explanatory and shall not require the operator to perform any look-up to interpret them, except for error messages that require resolution by a trained technician.
- xxi. The voting system software shall reference variables by fewer than five levels of indirection.
- xxii. The voting system software shall have functions with fewer than six levels of indented scope, counted as follows:

int function()


```

{
    if (a = true)
1   {
        if ( b = true )
2       {
            if ( c = true )
3           {
                if ( d =
true )
4           {

                    while(e > 0 )
5           {

                        code

                    }

                }

            }

        }

    }
}

```

xxiii. The voting system software shall initialize every variable upon declaration where permitted.

xxiv. The voting system software shall have all constants other than 0 and 1 defined or enumerated, or shall have a comment which clearly explains what each constant means in the context of its use. Where “0” and “1” have multiple meanings in the code unit, even they shall be identified.

xxv. The voting system software shall only contain the minimum implementation of the “a = b ? c : d” syntax. Expansions such as “j=a?(b?c:d):e;” are prohibited.

xxvi. The voting system software shall have all assert() statements coded such that they are absent from a production compilation. Such coding may be implemented by ifdef()s that remove them from or include them in the compilation. If implemented, the initial program identification in setup should identify that assert() is enabled and active as a test version.

- f. Control Constructs within the modules shall be limited to the acceptable constructs of Sequence, If-Then-Else, Do-While, Do-Until, Case, and the General Loop (including the special case for loop).
 - i. If the programming language used does not provide these control constructs, the voting system provider shall provide comparable control structure logic. The constructs shall be used consistently throughout the code. No other constructs shall be used to control program logic and execution.
 - ii. While some programming languages do not create programs as linear processes, stepping from an initial condition through changes to a conclusion, the program components may nonetheless contain procedures (such as “methods” in object-oriented languages). In these programming languages, the procedures shall execute through these control constructs or their equivalents, as defined and provided by the voting system provider.
 - iii. Operator intervention or logic that evaluates received or stored data shall not redirect program control within a program routine. Program control may be redirected within a routine by calling subroutines, procedures, and functions, and by interrupt service routines and exception handlers (due to abnormal error conditions). Do-While (False) constructs and intentional exceptions (used as GoTos) are prohibited.

- g. All modules of the voting system software shall use the following naming conventions:
 - i. Object, function, procedure, and variable names shall be chosen to enhance the readability and intelligibility of the program. Names shall be selected so that their parts of speech represent their use, such as nouns to represent objects and verbs to represent functions.
 - ii. Names used in code and in documentation shall be consistent.
 - iii. Names shall be unique within an application. Names shall differ by more than a single character. All single-character names are forbidden except those for variables used as loop indexes. In large systems where subsystems tend to be developed independently, duplicate names may be used where the scope of the name is unique within the application. Names shall always be unique where modules are shared.
 - iv. Language keywords shall not be used as names of objects, functions, procedures, variables, or in any manner not consistent with the design of the language.
- h. All modules of the voting system software shall adhere to basic coding conventions. The voting system providers shall identify the published, reviewed, and industry-accepted coding conventions used.
- i. All modules of the voting system software shall use the following comment conventions:
 - i. All modules shall contain headers. For small modules of 10 lines or less, the header may be limited to identification of unit and revision information. Other header information should be included in the small unit headers if not clear from the actual lines of code. Header comments shall provide the following information:
 - 1. The purpose of the unit and how it works;

2. Other units called and the calling sequence;
 3. A description of input parameters and outputs;
 4. File references by name and method of access (i.e., read, write, modify or append);
 5. Global variables used; and
 6. Date of creation and a revision record.
- ii. Descriptive comments shall be provided to identify objects and data types. All variables shall have comments at the point of declaration clearly explaining their use. Where multiple variables that share the same meaning are required, the variables may share the same comment.
 - iii. In-line comments shall be provided to facilitate interpretation of functional operations, tests, and branching.
 - iv. Assembly code shall contain descriptive and informative comments such that its executable lines can be clearly understood.
 - v. All comments shall be formatted in a uniform manner that makes it easy to distinguish them from executable code.
- j. All modules of the system shall meet the following requirements for installation of software, including hardware with embedded firmware.
 - i. If software is resident in the system as firmware, the voting system provider shall require and state in the system documentation that every device is to be retested to validate each ROM prior to the start of elections operations.
 - ii. To prevent alteration of executable code, no software shall be permanently installed or resident in the voting system unless the system documentation states that the jurisdiction shall provide a secure physical and procedural

environment for the storage, handling, preparation, and transportation of the system hardware.

- iii. The voting system bootstrap, monitor, and device-controller software may be resident permanently as firmware, provided that this firmware has been shown to be inaccessible to activation or control by any means other than by the authorized initiation and execution of the vote counting program, and its associated exception handlers.
- iv. The election-specific programming may be installed and resident as firmware, provided that such firmware is installed on a component (such as a computer chip) other than the component on which the operating system resides.
- v. After initiation of election day testing, no source code or compilers or assemblers shall be resident or accessible.
- vi. Independent analysis will test for the following conditions and report on absence or presence of the following input validations in accordance with section 45.5.2.4.3:
 1. Path manipulation;
 2. Cross Site Scripting.Basic X;
 3. Resource Injection;
 4. OS Command Injection (also called "Shell Injection"); and
 5. SQL Injection.
- vii. Independent analysis will test for the following conditions and report on absence or presence of the following range errors in accordance with section 45.5.2.4.3:
 1. Stack Overflow;
 2. Heap Overflow;
 3. Format string vulnerability; and
 4. Improper Null Termination.

viii. Independent analysis will test for following conditions and report on absence or presence of the following API abuses in accordance with section 45.5.2.4.3:

1. Heap Inspection; and
2. String Management/ Manipulation.

ix. Independent analysis will test for following conditions and report on absence or presence of the following Time and State conditions in accordance with section 45.5.2.4.3:

1. Time-of-check/Time-of-use race condition; and
2. Unchecked Error Condition.

x. Independent analysis will test for following conditions and report on absence or presence of the following code quality conditions accordance with section 45.5.2.4.3:

1. Memory Leaks;
2. Unrestricted Critical Resource Lock;
3. Double Free;
4. Use After Free;
5. Uninitialized variable;
6. Unintentional pointer scaling;
7. Improper pointer subtraction; and
8. Null Dereference.

xi. Independent analysis will test for following conditions and report on absence or presence of the following encapsulation conditions in accordance with section 45.5.2.4.3:

1. Private Array-Typed Field Returned from a Public Method;
2. Public Data Assigned to Private Array-Typed Field;

- 3. Overflow of static internal buffer;
and
 - 4. Leftover Debug Code.
- xii. The Application shall not open database tables for direct editing.
- k. All voting systems submitted for certification after March 31, 2008, shall meet the following minimum requirements for removable storage media with data controls:
- i. All voting data stored which includes vote records, ballot images, tally data and cast votes shall be authenticated and validated in accordance with cryptography requirements of subsection (c)(vii) of this requirement;
 - ii. All non-voting data stored shall be authenticated, encrypted, and validated in accordance with cryptography requirements of subsection (c)(vii) of this requirement; and
 - iii. Antivirus software shall be present and scan removable media upon insertion of media or media device on server and/or workstations hosting the elections management software.

45.5.2.6.2 The voting system provider shall provide documentation detailing voting system security in the areas listed below. The system shall contain documented configurations, properties and procedures to prevent, detect and log changes to system capabilities for:

- (a) Defining ballot formats;
- (b) Casting and recording votes;
- (c) Calculating vote totals consistent with defined ballot formats;
- (d) Reporting vote totals;
- (e) Altering of voting system audit records;
- (f) Changing, or preventing the recording of, a vote;
- (g) Introducing data for a vote not cast by a registered voter;
- (h) Changing calculated vote totals;

- (i) Preventing access to vote data, including individual votes and vote totals, to unauthorized individuals; and
- (j) Preventing access to voter identification data and data for votes cast by the voter such that an individual can determine the content of specific votes cast by the voter.

45.5.2.6.3 The voting system provider shall submit to the Secretary of State its recommended policies or guidelines governing:

- (a) Software access controls;
- (b) Hardware access controls;
- (c) Data communications;
- (d) Effective password management;
- (e) Protection abilities of a particular operating system;
- (f) General characteristics of supervisory access privileges;
- (g) Segregation of duties; and
- (h) Any additional relevant characteristics.

45.5.2.6.4 The voting system shall include detailed documentation as to the security measures it has in place for all systems, applicable software, devices that act as connectors (upload, download, and other programming devices), and any security measures the voting system provider recommends to the jurisdictions that purchase the voting system.

45.5.2.7 Telecommunications Requirements

45.5.2.7.1 Telecommunications includes all components of the system that transmit data outside of the closed network as defined in this Rule.

45.5.2.7.2 All electronic transmissions from a voting system shall meet the following minimum standards:

- (a) Modems from remote devices shall be “dial only” and cannot be programmed to receive a call;
- (b) All communications of data in transfer shall be encrypted, authenticated and verified to the FIPS 140-2 standard and verified to the FIPS 180 standard; and

45.5.2.7.3 Any modem in any component failing to meet these criteria shall not be used by any voting system.

45.5.2.7.4 All wireless components on voting systems shall be disabled with the exception of line of sight infrared technology used in a closed environment where the transmission and reception is shielded

from external infrared signals and can only accept infrared signals generated from within the system.

- 45.5.2.7.5 All systems that transmit data over public telecommunications networks shall maintain a clear audit trail that can be provided to the Secretary of State when election results are transmitted by telephone, microwave or any other type of electronic communication.
- 45.5.2.7.6 Systems designed for transmission of voter information (i.e. electronic pollbooks) over public networks shall meet security standards that address the security risks attendant with the casting of ballots at remote sites controlled by election officials using the voting system configured and installed by election officials and/or their voting system provider or contractor, and using in-person authentication of individual voters.
- 45.5.2.7.7 Any voting system provider of systems that cast individual ballots over a public telecommunications network shall provide detailed descriptions of:
- (a) All activities mandatory to ensuring effective system security to be performed in setting up the system for operation, including testing of security before an election.
 - (b) All activities that should be prohibited during system setup and during the time frame for voting operations, including both the hours when polls are open and when polls are closed.
- 45.5.2.7.8 In any situation in which the voting system provider's system transmits data through any telecommunications medium, the system shall be able to recover, either automatically or with manual intervention, from incomplete or failed transmission sessions and resume transmissions automatically when telecommunications are re-established.
- (a) Recovery of transmissions shall include notations of the interrupted transmission session and the resumed transmission session in the system and application transaction logs.
 - (b) Failure and recovery of transmissions shall not cause any error in data transmitted from the polling place to the central election site during a recovered transmission session.
- 45.5.2.7.9 Voting systems that use public telecommunications networks shall provide system documentation that clearly identifies all COTS hardware and software products and communications services used in the development and/or operation of the voting system, including operating systems, communications routers, modem drivers and dial-up networking software. Documentation shall identify the name, voting system provider, and version used for each such component.

45.5.2.7.10 Voting systems providers shall document how they plan to monitor and respond to known threats to which their voting systems are vulnerable. This documentation shall provide a detailed description, including scheduling information, of the procedures the voting system provider will use to:

- (a) Monitor threats, such as through the review of assessments, advisories, and alerts for COTS components;
- (b) Evaluate the threats and, if any, proposed responses.
- (c) Develop responsive updates to the system and/or corrective procedures; and
- (d) As part of certification requirements of the proposed system, provide assistance to customers, either directly or through detailed written procedures, how to update their systems and/or to implement the corrective procedures within the timeframe established by the Secretary of State.

45.5.2.8 Accessibility Requirements

45.5.2.8.1 Specific minimum accessibility requirements include those specified in section 1-5-704 C.R.S., Secretary of State Rule 34, Rule 35 and the following:

- (a) Buttons and controls shall be distinguishable by both shape and color;
- (b) Audio ballots shall meet the following standards:
 - (i) The voting system shall allow the voter to pause and resume the audio presentation.
 - (ii) The audio system shall allow voters to control within reasonable limits, the rate of speech.
- (c) No voting system or any of its accessible components shall require voter speech for its operation;
- (d) All Touchscreen technology shall be tested for use of fingers as well as non-human touch that is both wet and dry;
- (e) Voting systems shall include at least the ability to activate and navigate by means of push buttons, dials, wheels, keypads, and/or touch screens. All voting systems submitted for certification after March 31, 2008, shall also include any form of either switches, sip and puff devices, or additional blink control devices; and
- (f) Adjustability of color settings, screen contrasts and/or screen angles/tilt may be made by either the poll worker or voter if the system uses a display screen. A minimum of

two color settings, two contrast settings and two angles shall be available for all display screens.

45.5.2.8.2 Documentation of the accessibility of the voting system shall include the following items at a minimum:

- (a) If appropriate, voting booth design features that provide for privacy for the voter while voting (if a voting booth is not included with the system, then describe how voter privacy is accomplished);
- (b) Adaptability of the proposed system for voters with disabilities as outlined in the Americans with Disabilities Act guidelines;
- (c) Technology used by the voting system that prevents headset/headphone interference with hearing aids;
- (d) Types and size of voice file(s) the voting system uses;
- (e) Method for recording, sharing and storing voice files in the voting system;
- (f) How paginating through viewable screens is accomplished if it is required with the voting system;
- (g) Various methods of voting to ensure access by persons with multiple disabilities;
- (h) Capabilities of the voting system to accurately accept a non-human touch as input on the touch screen; and
- (i) Method for adjusting color settings, screen contrasts, and screen angles/tilt if the system uses a display screen.

45.5.2.9 Voter-Verifiable Paper Record Requirements (V-VPAT)

45.5.2.9.1 V-VPAT shall refer to a Voter-verified paper record as defined in section 1-1-104(50.6)(a), C.R.S.

45.5.2.9.2 Existing systems that are retrofitted to comply with this law shall be examined for certification by the Secretary of State. Any retrofitted voting system shall comply with the process and application for certification as identified by this rule.

45.5.2.9.3 The V-VPAT shall consist of the following minimum components:

- (a) The voting device shall contain a paper audit trail writer or printer that shall be attached, built into, or used in conjunction with the DRE. The printer shall duplicate a voter's selections from the DRE onto a paper record;
- (b) The unit or device shall have a paper record display unit or area that shall allow a voter to view his or her paper record;

- (c) The V-VPAT unit shall contain a paper record storage unit that shall store cast and spoiled paper record copies securely; and
 - (d) These devices may be integrated as appropriate to their operation.
- 45.5.2.9.4 V-VPAT devices shall allow voters to verify his or her selections on a paper record prior to casting ballots. The voter shall either accept or reject the choices represented on the paper record. Both the electronic record and the paper record shall be stored and retained upon the completion of casting a ballot.
- 45.5.2.9.5 The V-VPAT printer connection may be any standard, publicly documented printer port (or the equivalent) using a standard communication protocol.
- 45.5.2.9.6 The printer shall not be permitted to communicate with any other device than the voting device to which it is connected.
- 45.5.2.9.7 The printer shall only be able to function as a printer, and not perform any other non-printer related services.
- 45.5.2.9.8 Every electronic voting record shall have a corresponding paper record.
- 45.5.2.9.9 The paper record shall be considered an official record of the election available for recounts, and shall be sturdy, clean, and of sufficient durability to be used for this purpose.
- 45.5.2.9.10 The V-VPAT device shall be designed to allow every voter to review, and accept or reject his/her paper record in as private and independent manner as possible for both disabled and non-disabled voters.
- 45.5.2.9.11 The V-VPAT system shall be designed in conjunction with State Law to ensure the secrecy of votes so that it is not possible to determine which voter cast which paper record.
- 45.5.2.9.12 The V-VPAT printer shall print at a font size no less than ten (10) points for ease of readability. Any protective covering intended to be transparent shall be in such condition that it can be made transparent by ordinary cleaning of its exposed surface.
- 45.5.2.9.13 The V-VPAT system shall be designed to allow each voter to verify his or her vote on a paper record in the same language they voted in on the DRE.
- 45.5.2.9.14 The V-VPAT system shall be designed to prevent tampering with unique keys and/or seals for the compartment that stores the paper record, as well as meet the security requirements of this rule. Additional security measures may be in place on the printer to prevent tampering with the device.

- 45.5.2.9.15 The V-VPAT system shall be capable of printing and storing paper record copies for at least seventy-five (75) ballots cast without requiring the paper supply source, ink or toner supply, or any other similar consumable supply to be changed, assuming a fully printed double sided eighteen (18) inch ballot with a minimum of 20 contests.
- 45.5.2.9.16 The V-VPAT unit shall provide a “low supply” warning to the election judge to add paper, ink, toner, ribbon or other like supplies. In the event that an election judge is required to change supplies during the process of voting, the voter shall be allowed to reprint and review the paper audit trail without having to re-mark his or her ballot, and the device shall prevent the election judge from seeing any voters’ ballots.
- 45.5.2.9.17 All voting systems submitted for certification after March 31, 2008, shall stop the V-VPAT printer of all forward operations of the DRE if the printer is not working due to paper jams, out of supply of consumables, or other issue which may cause the correct readable printing of information on the V-VPAT record as designed.
- 45.5.2.9.18 The voting system provider shall provide procedures and documentation for the use of the V-VPAT device.
- 45.5.2.9.19 The printed information on the printed ballot or verification portion of the V-VPAT device shall contain at least the following items:
- (a) Name or header information of race, question or issue;
 - (b) Voter’s selections for the race information;
 - (c) Write-in candidate’s names if selected;
 - (d) Undervote or overvote information – this is in addition to the information on the review screen of the DRE;
 - (e) Ability to optionally produce a unique serial number (randomized to protect privacy); and
 - (f) Identification that the ballot was cancelled or cast.
- 45.5.2.9.20 The V-VPAT shall allow a voter to spoil his or her paper record no more than two (2) times. Upon spoiling, the voter shall be able to modify and verify selections on the DRE without having to reselect all of his or her choices.
- 45.5.2.9.21 Before the voter causes a third and final record to be printed, the voter shall be presented with a warning notice that the selections made on screen shall be final and the voter shall see and verify a printout of his or her vote, but shall not be given additional opportunities to change their vote.

- 45.5.2.9.22 All V-VPAT components shall be capable of integrating into existing state testing and auditing requirements of the voting system.
- 45.5.2.9.23 The V-VPAT component should print a barcode with each record that contains the human readable contents of the paper record and digital signature information. The voting system provider shall include documentation of the barcode type, protocol, and/or description of barcode and the method of reading the barcode as applicable to the voting system.
- 45.5.2.9.24 The V-VPAT component shall be designed such that a voter shall not be able to leave the voting area with the paper record.
- 45.5.2.9.25 If used for provisional ballots, the V-VPAT system shall be able to mark paper records as a provisional ballot through the use of human readable text and optionally printing barcode and/or serial number information which shall provide for mapping the record back to both the electronic record and the provisional voter for processing after verification in accordance with Article 8.5 of Title 1 C.R.S.
- 45.5.2.9.26 The Secretary of State shall keep on file procedures submitted by the voting system provider for how to investigate and resolve malfunctions including, but not limited to: misreporting votes, unreadable paper records, paper jams, low-ink, misfeeds, preventing the V-VPAT from being a single point of failure, recovering votes in the case of malfunction and power failures.

45.6 Testing

45.6.1 Voting System Provider Demonstration

- 45.6.1.1 The voting system provider shall demonstrate the exact proposed voting system to the Secretary of State or his or her designee prior to any functional testing. It should be expected that a minimum of 6 hours would be required of the voting system provider to demonstrate and assist with programming of the software as necessary.
- 45.6.1.2 The demonstration period does not have a pre-determined agenda for the voting system provider to follow; however, presentations should be prepared to address and demonstrate with the specific system the following items as they pertain to each area and use within the voting system:
 - (a) System overview;
 - (b) Verification of complete system matching EAC certification;
 - (c) Ballot definition creation;
 - (d) Printing ballots on demand;
 - (e) Hardware diagnostics testing;
 - (f) Programming election media devices for various count methods:

- (i) Mail-in Ballots;
 - (ii) Early Voting;
 - (iii) Precinct/Poll Place;
 - (iv) Provisional; and
 - (v) Vote Center.
- (g) Sealing and securing system devices;
 - (h) Logic and accuracy testing;
 - (i) Processing ballots;
 - (j) Accessible use;
 - (k) Accumulating results;
 - (l) Post-election audit;
 - (m) Canvass process handling;
 - (n) Audit steps and procedures throughout all processes;
 - (o) Certification of results; and
 - (p) Troubleshooting.

45.6.1.3 The voting system provider shall have access to the demonstration room for one hour prior to the start of the demonstration to provide time for setup of the voting system.

45.6.1.4 A maximum of 3 business days – 24 hours total shall be allowed for the demonstration.

45.6.1.5 The demonstration shall be open to representatives of the press and the public to the extent allowable. The Secretary of State may limit the number of representatives from each group to accommodate space limitations and other considerations.

45.6.1.6 The Secretary of State shall post notice of the fact that the demonstration will take place in the designated public place for posting notices for at least seven (7) days before the demonstration. The notice shall indicate the general time frame during which the demonstration may take place and the manner in which members of the public may obtain specific information about the time and place of the test.

45.6.1.7 The voting system provider shall provide the same class of workstation and/or server for testing the voting system as the normal production environment for the State of Colorado.

45.6.2 Functional Testing

45.6.2.1 Voting system provider requirements for testing

- 45.6.2.1.1 The voting system provider shall submit for testing the specific system configuration that shall be offered to jurisdictions including the components with which the voting system provider recommends that the system be used.
- 45.6.2.1.2 The voting system provider is not required to be present for the functional testing, but shall provide a point of contact for support.
- 45.6.2.1.3 The proprietary software shall be installed on the workstation/server and all applicable voting system components by the testing board following the verification of the trusted build, and using the procedures provided by the voting system provider. After installation, the software and firmware shall be verified to the trusted build hash values.
- 45.6.2.1.4 The test shall be performed with test ballots and an election setup file, as determined by the Secretary of State.
- 45.6.2.1.5 Functional testing shall be completed according to the schedule identified in section 45.3.3.

45.6.2.2 Secretary of State requirements for testing

- 45.6.2.2.1 The Secretary of State or the designee shall conduct functional testing on the voting system based on this rule and additional testing procedures as determined by the Secretary of State.
- 45.6.2.2.2 The voting system shall receive a pass/fail or not applicable for each test conducted with applicable notation on the test log.
- 45.6.2.2.3 A test log of the testing procedure shall be maintained and recorded on file with the Secretary of State. This test log shall identify the system and all components by voting system provider name, make, model, serial number, software version, firmware version, date tested, test number, test description, notes of test, applicable test scripts, and results of test. All test environment conditions shall be noted.
- 45.6.2.2.4 All operating steps, the identity and quantity of simulated ballots, annotations of output reports, any applicable error messages and observations of performance shall be recorded.
- 45.6.2.2.5 In the event that a deviation to requirements pertaining to the test environment, voting system arrangement and method of operation, the specified test procedure, or the provision of test instrumentation and facilities is required, this deviation shall be recorded in the test log together with a discussion of the reason for the deviation and a statement of the effect of the deviation on the validity of the test procedure.

45.6.2.3 General Testing Procedures and Instructions

- 45.6.2.3.1 Certification tests shall be used to determine compliance with applicable performance standards for the system and its components. The general procedure for these tests shall:
- (a) Verify, by means of applicant's standard operating procedure, that the device is in a normal condition and status;
 - (b) Establish the standard test environment or the special environment required to perform the test;
 - (c) Invoke all operating modes or conditions necessary to initiate or to establish the performance characteristic to be tested;
 - (d) Measure and record the value or the range of values of the performance characteristic to be tested; and
 - (e) Verify all required measurements have been obtained, and that the device is still in a normal condition and status.
- 45.6.2.3.2 All tests shall be conducted as described in this section 45.6.2.3 in regular election mode. At no point shall testing be conducted in any form of test mode.
- 45.6.2.3.3 Each voting system shall be tested and examined by conducting at least three mock elections which shall include voting scenarios that exist within a primary, a coordinated election, and a recall election.
- 45.6.2.3.4 Each component of the voting system shall contain provisions for verifying it is functioning correctly and, whether operation of the component is dependent upon instructions specific to that election. Test scripts shall be substantive and qualitative in form with expected results listed for each test.
- 45.6.2.3.5 Election scenarios shall feature at least 10 districts (or district types), comprised of at least 20 precincts that will result in a minimum of 5 unique ballot styles or combinations as indicated in the instructions to providers.
- 45.6.2.3.6 The voting system provider is required to produce ballots in quantities identified below for each of the elections. Enough ballots need to be created to conduct the testing of the voting system as defined in this rule. One complete set of ballots will be tested in each of the applicable counter types (or groups) indicated below:
- (a) Poll Place or Vote Center - ballots are flat – no score marks;
 - (b) Early Voting – ballots are flat – no score marks;
 - (c) Mail-in – ballots are scored and folded to fit in standard Colorado Mail-in Ballot Envelopes; and

(d) Provisional – ballots are flat- no score marks.

45.6.2.3.7 All ballots provided shall be blank with no marks on them. The following combinations of ballots are required:

(a) Four separate decks of ballots shall be provided consisting of 25 ballots for each precinct/precinct split generated for each election that are flat (1500 minimum combined). At least one deck shall have the General Election data, and at least one shall have the Primary election data as indicated in the instructions for voting system providers;

(b) Four separate decks of ballots shall be provided consisting of 25 ballots for each precinct/precinct split generated for each election that are folded (1500 minimum combined). At least one deck shall have the General Election data, and at least one shall have the Primary election data as indicated in the instructions for voting system providers;

(c) Four separate decks of ballots consisting of 300 ballots of any single precinct from each election. Two of these decks shall be printed in all alternative languages as required for the State of Colorado pursuant to section 45.5.2.3.5;

(d) One separate deck of ballots consisting of 200 ballots of any single precinct from the Coordinated election shall be provided that contains a two page ballot (races on four faces);

(e) One separate deck of ballots consisting of 10 ballots for each precinct generated for the Recall election that are flat as indicated in the instructions for voting system providers; and

(f) Any voting system provider that uses serial numbers printed on ballots for processing shall produce ballots of each requirement above printed both with and without serial numbers.

45.6.2.3.8 The voting system provider shall provide 10 ballot marking pens/pencils/markers as defined by their system for marking ballots by the Secretary of State or the designee.

45.6.2.3.9 The testing board shall mark a minimum of 300 ballots with marking devices of various color, weight, and consistency to determine accurate counting with a variety of marking devices.

45.6.2.3.10 Ballots shall be cast and counted in all applicable counter types (or counter groups) as necessary based on the parts included in the voting system. These are at a minimum: Poll Place (or Vote Center), Mail-in, Provisional, and Early Voting. Ballots may be run through components 10 or more times depending on components and counter group being tested to achieve a minimum number of ballots cast as follows for each group:

- (a) Polling Place / OS = 1,500;
- (b) Polling Place / DRE = 500;
- (c) Vote Center/ OS = 5,000;
- (d) Vote Center / DRE = 500
- (e) Early Voting / OS = 5,000;
- (f) Early Voting / DRE = 250;
- (g) Mail-in = 10,000; and
- (h) Provisional = 5,000.

45.6.2.3.11 Ballot design shall cover the scope of allowable designs for the given system. For example, if a system is capable of producing 11" and 18" ballots, then both ballot styles shall be tested in each of the elections above. If more sizes are available, they shall also be tested. Ballots shall be designed and presented with a maximum of four (4) columns and a minimum of one (1) column.

45.6.2.3.12 Ballots shall be printed in applicable languages as required by State and/or federal law.

45.6.2.3.13 Ballots shall include candidates to represent the maximum number of political parties in the State of Colorado, and shall accommodate all qualified political parties and political organizations.

45.6.2.3.14 Ballots shall include the following minimum race situations to simulate and test "real world" situations in the State of Colorado:

- (a) Parties for different races;
- (b) Selection of a pair of candidates (i.e. president and vice president);
- (c) In a Primary Election, allow a voter to vote for the candidate of the party of his or her choice and for any and all non-partisan candidates and measures, while preventing the voter from voting for a candidate of another party;
- (d) In a general election, allow a voter to vote for any candidate for any office, in the number of positions allowed for the office, and to select any measure on the ballot that the voter is allowed to vote in, regardless of party;
- (e) Allow for programming to accommodate Colorado recall questions as prescribed in Article 12 of Title 1, C.R.S.;
- (f) A minimum of 20 pairs of "yes" and "no" positions for voting on ballot issues; and

- (g) Ability to contain a ballot question or issue of at least 200 words.

45.6.2.3.15 Additional tests and procedures may be requested at the discretion of the Secretary of State.

45.6.3 Certification

45.6.3.1 The Secretary of State shall certify voting systems that substantially comply with the requirements in this rule, Colorado Election Code, and any additional testing that is deemed necessary by the Secretary of State.

45.6.3.2 If any malfunction or data error is detected, its occurrence and the duration of operating time preceding it shall be recorded for inclusion in the analysis and the test shall be interrupted. If corrective action is taken to restore the devices to a fully operational condition within 8 hours, then the test may be resumed at the point of suspension.

45.7 Temporary Use

45.7.1 If a voting system provider has a system that has been approved by an VSTL, but has not yet been approved for certification through the Secretary of State, the voting system provider or the designated election official may apply to the Secretary of State for temporary approval of the system to be used for up to one year.

45.7.2 Upon approval of temporary use, a jurisdiction may use the voting system, or enter into a contract to rent or lease the voting system for a specific election upon receiving written notice from the Secretary of State's office. At no time shall a jurisdiction enter into a contract to purchase a voting system that's been approved for temporary use.

45.7.3 The Secretary of State shall approve use of a temporarily approved voting system for each election that a jurisdiction would like to conduct with the voting system.

45.7.4 Temporary use does not supersede the certification requirements and/or process, and may be revoked at any time at the discretion of the Secretary of State.

45.8 Periodic Review

45.8.1 The Secretary of State shall periodically review the voting systems in use in Colorado to determine if the system(s):

- (a) Are defective, obsolete, or unacceptable for use based on the requirements of this rule; and

- (b) Have been modified from certified and trusted build versions of hardware or software;

45.8.2 The Secretary of State shall review a minimum of two randomly selected jurisdictions and voting systems per calendar year at the choosing of the Secretary of State.

45.8.3 The Secretary of State shall conduct an annual visual inspection of all software incident records maintained by each voting system provider certified for use in the State of Colorado.

45.8.4 After such review, certification or temporary approval for use may be withdrawn. Three (3) months notice shall be given prior to withdrawing certification of any voting system

unless the Secretary of State shows good cause for a shorter notice period.

45.8.5 All forms, notes and documentation from a periodic review shall be kept on file with the Secretary of State.

45.9 Decertification

45.9.1 If after any time the Secretary of State has certified a voting system, it is determined that the voting system fails to substantially meet the standards set forth in this rule, the Secretary of State shall notify any jurisdictions in the State of Colorado and the voting system provider of that particular voting system that the certification of that system for future use and sale in Colorado is to be withdrawn.

45.9.2 Certification of a voting system may be revoked and/or suspended at the discretion of the Secretary of State based on information that may be provided after the completion of the initial certification. This information may come from any of the following sources:

- (a) The Election Assistance Commission (EAC);
- (b) Voting Systems Testing Laboratories (VSTL);
- (c) The Federal Election Commission (FEC);
- (d) The National Software Reference Library (NSRL);
- (e) National Association of State Election Directors (NASED);
- (f) The National Association of Secretaries of State (NASS);
- (g) Information from any state elections department or Secretary of State; and/or
- (h) Information from Colorado County Clerk and Recorders or their association.

45.9.3 Any use of a decertified or uncertified voting system for any jurisdiction in the State of Colorado shall result in possible loss of future and other existing certifications within the State, at the discretion of the Secretary of State.

45.9.4 Pursuant to section 1-5-621, C.R.S., the Secretary of State shall hold a public hearing to consider the decision to decertify a voting system.

45.10 Modifications and Re-examination

45.10.1 Any field modification, change, or other alteration to a voting system shall require approval or certification before it may be used in any election within the State of Colorado.

45.10.2 A voting system provider may apply to the Secretary of State for the review of a modification of an existing certified system at any time during the year. Secretary of State shall conduct sufficient testing to ensure that all incremental changes to any voting system being submitted for certification meet all security requirements set forth in this rule.

45.11 Acceptance Testing by Jurisdictions

45.11.1 Whenever an election jurisdiction acquires a new system or modification of an existing

system certified by the Secretary of State, the election jurisdiction shall perform acceptance tests of the system before it may be used to cast or count votes at any election. The voting system shall be operating correctly, pass all tests as directed by the acquiring jurisdiction's project manager or contract negotiator, and shall be identical to the voting system certified by the Secretary of State.

45.11.2 The voting system provider shall provide all manuals and training necessary for the proper operation of the system to the jurisdiction, or as indicated by their contract.

45.11.3 The election jurisdiction shall perform a series of functional and programming tests that shall test all functions of the voting system at their discretion.

45.11.4 The jurisdiction shall coordinate acceptance testing with the Secretary of State's designated agent and complete a Jurisdiction Acceptance Test form provided by the Secretary of State.

45.12 Purchases and Contracts

45.12.1 Any voting system that has been certified under the procedures of this Rule are eligible for purchase, lease, or rent for use by jurisdictions within the State of Colorado providing the contract contains the following items:

- (a) The voting system is certified for use within the State;
- (b) Contract contains training and maintenance costs for Jurisdiction; and
- (c) Contract identifies components contained in the certified voting system, and appears complete with all accessories necessary for successfully conducting an election within the laws and rules of the State of Colorado.

45.12.2 The SOS shall maintain on file a list of all components used and purchased for use. The list shall include at a minimum, the name of the jurisdiction, the date of purchase, the serial number(s) of voting devices and voting systems that was purchased.

Rule 46. Rules Concerning Vacancies in Nomination – Repealed

Rule 47. Rules Concerning Fleeing Voters

47.1 A fleeing voter is any voter who leaves the voting area without completing the voting process through the final step of casting his or her ballot.

47.2 If a voter leaves the voting area without completing the voting process, two judges of different affiliation shall to the extent possible, cover the voter's choices, and cast the ballot as the voter left it.

**TITLE 32
SPECIAL DISTRICTS**

**ARTICLE 1
Special District Provisions**

**PART 8
ELECTIONS**

32-1-801. Legislative declaration - applicability. It is hereby declared that the orderly conduct of elections of special districts will serve a public use and will promote the health, safety, security, and general welfare of the people of the state of Colorado. Therefore, all elections shall be held pursuant to the provisions of articles 1 to 13 of title 1, C.R.S., unless otherwise provided.

32-1-802. Acts and elections conducted pursuant to provisions which refer to qualified electors. Any elections, and any acts relating thereto, carried out under this part 8, which were conducted prior to July 1, 1987, pursuant to provisions which referred to a qualified elector rather than an eligible elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

32-1-803. Acts and elections conducted pursuant to provisions which refer to registered electors. Any elections and any acts relating to those elections, carried out under this part 8 which were conducted prior to July 1, 1992, and which were valid when conducted, shall be held to be legal and valid in all respects.

32-1-803.5. Organizational election - new special district. At any election for the organization of a new special district, the court shall also order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness or any question or questions necessary to implement the provisions of section 20 of article X of the Colorado constitution as applied to the new special district, if the petition filed pursuant to section 32-1-301 requests that such questions be submitted at the organizational election. The order of the court shall make the determinations required by section 32-1-1101 (2) and (3) (a) and require the clerk of the court to conduct the election in accordance with section 20 of article X of the Colorado constitution.

32-1-804. Board to conduct elections - combined election - time for special election. (1) After a special district is organized and the first board is elected, the board shall govern the conduct of all subsequent regular and special elections of the special district and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of the elections. The board in its discretion, but no more frequently than every four years, may reestablish the boundaries of director districts created pursuant to section 32-1-301 (2) (f) so that the director districts have, as nearly as possible, the same number of eligible electors.

(2) All powers and authority granted to the board by this part 8 for the conduct of regular or special elections may be exercised in the absence of the board by the secretary or by an assistant secretary appointed by the board. The person named by the board who is responsible for the conducting of the election shall be the designated election official.

32-1-804.1. Call for nominations. Not less than seventy-five days nor more than ninety days before a regular special district election, the designated election official shall provide notice by publication of a call for nominations for the election. The call shall state the special district director offices to be voted upon at the election, where a self-nomination and acceptance form may be obtained, the deadline for submitting the self-nomination and acceptance form to the designated election official, and information on obtaining an absentee ballot.

32-1-804.3. Candidates for director - self-nomination and acceptance form.

(1) Not less than sixty-seven days before the date of the regular special district election, any person who desires to be a candidate for the office of a special district director shall file a self-nomination and acceptance form or letter signed by the candidate and by a registered elector as a witness to the signature of the candidate.

(2) On the date of signing the self-nomination and acceptance form or letter, a candidate for director shall be an eligible elector of the special district, if the district is divided into director districts established pursuant to section 32-1-301 (2) (f), the candidate shall be an eligible elector within the boundaries of the director district in which the candidate is running for office.

(3) A self-nomination and acceptance form that is not sufficient may be amended once at any time prior to 3 p.m. on the sixty-seventh day before the election.

(4) The self-nomination and acceptance form or letter shall state the name of the special district in which the election will be held, the special district director office sought by the candidate, the term of office sought if more than one length of a director's term is to be voted upon at the election, the date of the election, and the full name of the candidate as it is to appear on the ballot. Unless physically unable, all candidates and witnesses shall sign their own signature and shall print their names, their respective residence addresses, including the street number and name, the city or town, the county, telephone number, and the date of signature on the self-nomination and acceptance form or letter.

(5) The self-nomination and acceptance form or letter shall be filed with the designated election official or, if none has been designated, the presiding officer or the secretary of the board of directors of the special district in which the election will be held.

(6) The self-nomination and acceptance form or letter shall be verified and processed substantially as provided in section 1-4-908, C.R.S. A protest on such a form or letter shall be determined substantially as provided in sections 1-4-909 and 1-4-911, C.R.S. Cure of such a form or letter shall be allowed substantially as provided for in section 1-4-912, C.R.S.

32-1-805. Time for holding elections - type of election - manner of election.

(1) Except as otherwise provided in subsection (4) of this section, regular special district elections shall be held on the Tuesday succeeding the first Monday of May in every even-numbered year.

(2) Special elections may be held on the first Tuesday after the first Monday in February, May, October, or December, except for ballot issue elections, which may be held only in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. A ballot issue election that is not part of an organizational election shall be conducted either as part of a coordinated election or in accordance with the provisions of the "Mail Ballot Election Act", article 7.5 of title 1, C.R.S.

(3) Whenever the date of a regular special district election is identical to the date set for a municipal or another special district election in any municipality or other special district having boundaries coterminous with the special district, the election may be held jointly with the municipal or other special district election.

(4) Any election for the organization of a new health assurance or health service district shall be held on the date of the general election or on the first Tuesday in November of an odd-numbered year, and any election on the proposal of a health assurance or health service district shall be conducted by the county clerk and recorder in which the proposed district will be located as part of a coordinated election in accordance with the provisions of section 1-7-116, C.R.S.

32-1-806. Persons entitled to vote at special district elections. (1) No person shall be permitted to vote in any election unless that person is an eligible elector as defined in section 32-1-103 (5) (a).

(2) Any person desiring to vote at any election as an eligible elector pursuant to section 32-1-103 (5) (a) (II) shall sign a self-affirmation that the person is an elector of the special district. The self-affirming oath or affirmation shall be on a form that contains in substance the following:

"I, (printed name), who reside at (address), am an elector of this (name of special district) district and desire to vote at this _____ election. I do solemnly swear (or affirm) that I am registered to vote in the state of Colorado and qualified to vote in this special district election as:

_____ A resident of the district or area to be included in the district for not less than thirty days; or

_____ The owner of taxable real or personal property situated within the boundaries of the special district or area to be included within the special district; or

_____ A person who is obligated to pay taxes under a contract to purchase taxable property in the special district or the area to be included within the special district; or

_____ The spouse of (name of spouse) who is the owner of taxable real or personal property situated within the boundaries of the special district or area to be included within the special district.

I have not voted previously at this election.

Date _____

Signature of elector _____."

(3) For electors who vote at any election by mail-in ballot or mail ballot, the affidavit on the envelope of the ballot as required by title 1, C.R.S., may be substituted for the self-affirming oath or affirmation required by subsection (2) of this section.

(4) A person who completes the self-affirming oath or affirmation required by subsection (2) of this section shall be permitted to vote, unless such person's right to vote is challenged.

32-1-807. Nonapplicability of criminal penalties. Election offenses and penalties prescribed by parts 2 and 3 of article 13 of title 1, C.R.S., do not apply to elections authorized under this title.

32-1-808. Transfer of property title to qualify electors - limitations. (1) (a) No person shall knowingly take or place title to taxable property in the name of another or enter into a contract to purchase or sell taxable property for the purpose of attempting to qualify such person as an eligible elector at any special district election. Any ballot cast in violation of this subsection (1) as determined in an election contest conducted pursuant to part 2 of article 11 of title 1, C.R.S., shall be void.

(b) No person shall aid or assist any person in doing any of the acts described in paragraph (a) of this subsection (1).

(2) (a) A person may take or place title to taxable property in the name of another or enter into a contract to purchase or sell taxable property for the purpose of attempting to qualify such person as an eligible elector for any special district election under the following circumstances:

(I) A vacancy exists on the board of the special district and, within ten days of the publication of notice of such vacancy, no otherwise qualified eligible elector files a letter of interest in filling such position with the board;

(II) In any organizational election at which there are more than ten eligible electors, on or after the second day before the filing deadline for self-nomination and acceptance forms or letters pursuant to section 32-1-305.5 (4), the number of otherwise qualified eligible electors who have filed such self-nomination and acceptance forms or letters is less than the number of special district director offices to be voted upon at such election;

(III) There are less than eleven eligible electors as of any date before an organizational election; or

(IV) On or after the day after the filing deadline for self-nomination and acceptance forms or letters pursuant to section 32-1-804.3, before any regular special district election, the number of otherwise qualified eligible electors who have filed self-nomination and acceptance forms or letters pursuant to section 32-1-804.3 is less than the number of special district director offices to be voted upon at the election.

(b) (I) Notwithstanding any other provision of law, no person shall place title to taxable property in the name of another or enter into a contract to sell taxable property for the purpose of attempting to qualify more than the number of persons who are necessary to be eligible electors in order to:

(A) Fill a vacancy on a board except as permitted by the provisions of subparagraph (I) of paragraph (a) of this subsection (2); or

(B) Become a candidate for director in a special district election except as permitted by the provisions of subparagraphs (II), (III), and (IV) of paragraph (a) of this subsection (2).

(II) The incidental qualification of the spouse of a person as an eligible elector pursuant to section 32-1-103 (5) (a) (II) shall not constitute a qualification of more than the number of persons necessary to be eligible electors under subparagraph (I) of this paragraph (b).

(3) It shall not constitute a violation of subsection (1) of this section for a person to

take or place title to taxable property in the name of another or to enter into a contract to purchase or sell taxable property in substitution of property acquired in accordance with subsection (2) of this section.

(4) Any person who is an eligible elector as of July 1, 2006, or who has been qualified as an eligible elector under this section shall remain qualified as an eligible elector until such time as such person ceases to meet the qualifications set forth in section 32-1-103 (5).

(5) Any person elected to a board whose qualification as an eligible elector is not challenged and overturned in accordance with the requirements specified in part 2 of article 11 of title 1, C.R.S., shall not be subject to further challenge based upon qualification as a property owner under this section for the remainder of the director's term in office.

PART 9 DIRECTORS - ORGANIZATION OF BOARD

32-1-901. Oath and bond of directors. (1) Each director, within thirty days after his or her election or appointment to fill a vacancy, except for good cause shown, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto. When an election is cancelled in whole or in part pursuant to section 1-5-208 (1.5), C.R.S., each director who was declared elected shall take the oath required by this subsection (1) within thirty days after the date of the regular election, except for good cause shown. The oath may be administered by the county clerk and recorder, by the clerk of the court, by any person authorized to administer oaths in this state, or by the chairman of the board and shall be filed with the clerk of the court and with the division.

(2) At the time of filing said oath, there shall also be filed for each director an individual, schedule, or blanket surety bond at the expense of the special district, in an amount determined by the board of not less than one thousand dollars each, conditioned upon the faithful performance of his duties as director.

(3) If any director fails to take the oath or furnish the requisite bond within the period allowed, except for good cause shown, his office shall be deemed vacant, and the vacancy thus created shall be filled in the same manner as other vacancies in the office of director.

32-1-902. Organization of board - compensation - disclosure. (1) After taking oath and filing bonds, the board shall elect one of its members as chairman of the board and president of the special district, one of its members as a treasurer of the board and special district, and a secretary who may be a member of the board. The secretary and the treasurer may be one person, but, if such is the case, he shall be a member of the board. The board shall adopt a seal, and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and all corporate acts which shall be open to inspection of all electors, as well as to all other interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the special district in permanent records. He shall file with

the clerk of the court, at the expense of the special district, a corporate fidelity bond in an amount determined by the board of not less than five thousand dollars, conditioned on the faithful performance of the duties of his office.

(3) (a) (I) For directors serving a term of office commencing prior to July 1, 2005, each director may receive as compensation for the director's service a sum not in excess of one thousand two hundred dollars per annum, payable not to exceed seventy-five dollars per meeting attended.

(II) For directors serving a term of office commencing on or after July 1, 2005, each director may receive as compensation for the director's service a sum not in excess of one thousand six hundred dollars per annum, payable not to exceed one hundred dollars per meeting attended.

(b) No director shall receive compensation as an employee of the special district, other than that provided in this section, and any director shall disqualify himself or herself from voting on any issue in which the director has a conflict of interest unless the director has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S. Reimbursement of actual expenses for directors shall not be considered compensation. No director receiving workers' compensation benefits awarded in the line of duty as a volunteer firefighter or pension payments to retired firefighters shall be allowed to vote on issues involving the director's disability or pension payments.

(4) If a director of any special district owns undeveloped land which constitutes at least twenty percent of the territory included in the special district, such director shall disclose such fact in accordance with section 18-8-308, C.R.S., before each meeting of the board, and the fact of such disclosure shall be entered in the minutes of such meeting. For the purposes of this subsection (4), "undeveloped land" means real property which has not been subdivided or which has no improvements constructed on it, excluding real property dedicated for park, recreation, or open space purposes.

32-1-903. Meetings. (1) The board shall meet regularly at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the special district require, upon notice to each director. All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this subsection (1) governing the location of meetings may be waived only if the following criteria are met:

(a) The proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this subsection (1) and further stating the date, time, and place of such meeting.

(2) Notice of time and place designated for all regular meetings shall be posted in at least three public places within the limits of the special district, and, in addition, one such notice shall be posted in the office of the county clerk and recorder in the county or counties in which the special district is located. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special

meetings may be called by any director by informing the other directors of the date, time, and place of such special meeting, and the purpose for which it is called, and by posting notice as provided in this section at least three days prior to said meeting. All official business of the board shall be conducted only during said regular or special meetings at which a quorum is present, and all said meetings shall be open to the public.

(3) The notice posted pursuant to subsection (2) of this section for any regular or special meeting at which the board intends to make a final determination to issue or refund general obligation indebtedness, to consolidate the special district with another special district, to dissolve the special district, to file a plan for the adjustment of debt under federal bankruptcy law, or to enter into a private contract with a director, or not to make a scheduled bond payment, shall set forth such proposed action.

32-1-904. Office. The office of the special district shall be at some fixed place to be determined by the board.

32-1-905. Vacancies. (1) A director's office shall be deemed to be vacant upon the occurrence of any one of the following events prior to the expiration of the term of office:

(a) If for any reason a properly qualified person is not elected to a director's office by the electors as required at a regular election;

(b) If a person who was duly elected or appointed fails, neglects, or refuses to subscribe to an oath of office or to furnish the bond in accordance with the provisions of section 32-1-901;

(c) If a person who was duly elected or appointed submits a written resignation to the board;

(d) If the person who was duly elected or appointed ceases to be qualified for the office to which he was elected;

(e) If a person who was duly elected or appointed is convicted of a felony;

(f) If a court of competent jurisdiction voids the election or appointment or removes the person duly elected or appointed for any cause whatsoever, but only after his right to appeal has been waived or otherwise exhausted;

(g) If the person who was duly elected or appointed fails to attend three consecutive regular meetings of the board without the board having entered upon its minutes an approval for an additional absence or absences; except that such additional absence or absences shall be excused for temporary mental or physical disability or illness;

(h) If the person who was duly elected or appointed dies during his term of office.

(2) (a) Any vacancy on the board shall be filled by appointment by the remaining director or directors, the appointee to serve until the next regular election, at which time, the vacancy shall be filled by election for any remaining unexpired portion of the term. If, within sixty days of the occurrence of any vacancy, the board fails, neglects, or refuses to appoint a director from the pool of any duly qualified, willing candidates, the board of county commissioners of the county which approved the organizational petition may appoint a director to fill such vacancy. The remaining director or directors shall not lose their authority to make an appointment to fill any vacancy unless and until the board of county commissioners which approved the organizational petition has actually made an appointment to fill that vacancy.

(b) No board of county commissioners shall make an appointment pursuant to

paragraph (a) of this subsection (2) unless it provides thirty days' notice of its intention to make such appointment to the remaining members of the board and the vacancy remains open at the time the board of county commissioners makes its appointment. If the organizational petition was approved by more than one board of county commissioners, then the appointment shall be made by the boards of the county commissioners which approved the petition, sitting jointly. Such an appointment shall be made at an open public meeting.

(2.5) If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district, then the board of county commissioners of the county or counties which approved the organizational petition may appoint all directors from the pool of duly qualified, willing candidates. The board appointed pursuant to this subsection (2.5) shall call a special election within six months after their appointment, which special election is to be held in accordance with the provisions of section 32-1-305.5 and articles 1 to 13 of title 1, C.R.S.; except that the question of the organization shall not be presented at the election. In the event a district is wholly within the boundaries of a municipality, the governing body of the municipality may appoint directors.

(3) All appointments shall be evidenced by an appropriate entry in the minutes of the meeting, and the board shall cause a notice of appointment to be delivered to the person so appointed. A duplicate of each notice of appointment, together with the mailing address of the person so appointed, shall be forwarded to the division.

32-1-906. Directors subject to recall. (1) Any director elected to the board of any special district who has actually held office for at least six months may be recalled from office by the eligible electors of the special district. A petition signed by the lesser of three hundred eligible electors or forty percent of the eligible electors demanding the recall of any director named in the petition shall be filed in the court. Any recall shall be governed by the provisions of part 1 of article 12 of title 1, C.R.S.

(2) to (5) (Deleted by amendment, L. 92, p. 886, § 124, effective January 1, 1993.)

32-1-907. Recall election - resignation. (1) If a director subject to a recall petition offers a resignation, it shall be accepted, and the vacancy caused by the resignation, or from any other cause, shall be filled as provided by section 32-1-905 (2). If the director does not resign within five days after the sufficiency of the recall petition has been sustained, the board shall order that a recall election be held pursuant to the provisions of part 1 of article 12 of title 1, C.R.S.

(2) (Deleted by amendment, L. 92, p. 887, § 125, effective January 1, 1993.)



CAMPAIGN AND POLITICAL FINANCE & FAIR CAMPAIGN PRACTICES ACT
2008 SPECIAL DISTRICT REPORT FILING CALENDAR

MAY 6, 2008 REGULAR BIENNIAL SPECIAL DISTRICT ELECTION

CHECK WITH THE DEPARTMENT OF LOCAL AFFAIRS (TERRI MAULIK) FOR QUESTIONS REGARDING SPECIAL DISTRICT ELECTIONS.

This Calendar applies to:

All Special District Candidates, Committees and 527 Political Organizations whose candidates or issues appear on the May 6, 2008 ballot.

REPORT DUE DATES	REPORTING PERIOD COVERS
April 15, 2008 (Tue.)	April 27, 2007 through April 10, 2008 (Inactive candidates & committees in 2007 going to active in 2008) June 3, 2007 through April 10, 2008 (Active candidates & committees in 2007 staying active in 2008)
May 1, 2008 (Thurs.) (Annual Report)	April 27, 2007 through April 26, 2008
May 2, 2008 (Fri.)	April 11, 2008 through April 27, 2008
June 5, 2008 (Thurs.)	April 28, 2008 through May 31, 2008

Elections: C.R.S. 32-1-103(21)
Disclosure: C.R.S. 1-45-108 & CPF Rule 4.14
Reporting due dates & periods: C.R.S. 1-45-108(2)(a)(II) & (e); CPF Rule 5.8 & 5.9

NOTE: The due dates and report periods listed above apply to special district elections held on May 6, 2008 only. Due dates and report periods associated with elections held on other dates will be different than those listed above. Special district elections may also be held in February, October, November or December.

An annual report must be filed by committees that remain open (i.e. those not yet terminated) no later than the first business day of the month in which the anniversary of the election occurs. Inquiries regarding special district elections and or disclosure reporting should be directed to the Designated Election Official or appropriate filing officer.

Rev. 08/2007

COLORADO CONSTITUTION
ARTICLE XXVIII
(Amendment 27)

Campaign and Political Finance

Section 1. Purpose and findings. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates create the potential for corruption and the appearance of corruption; that large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; that because of the use of early voting in Colorado timely notice of independent expenditures is essential for informing the electorate; that in recent years the advent of significant spending on electioneering communications, as defined herein, has frustrated the purpose of existing campaign finance requirements; that independent research has demonstrated that the vast majority of televised electioneering communications goes beyond issue discussion to express electoral advocacy; that political contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas and can unfairly influence the outcome of Colorado elections; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

Source: L. Initiated 2002: Entire Article added, **L. 2003**, p. 3615. For the effective date of this Article, see the editor's note following the Article heading.

Section 2. Definitions. For the purpose of this Article and any statutory provisions pertaining to campaign finance, including provisions pertaining to disclosure:

(1) "Appropriate officer" means the individual with whom a candidate, candidate committee, political committee, small donor committee, or issue committee must file pursuant to section 1-45-109 (1), C.R.S., or any successor section.

(2) "Candidate" means any person who seeks nomination or election to any state or local public office that is to be voted on in this state at any primary election, general election, school district election, special district election, or municipal election. "Candidate" also includes a judge or justice of any court of record who seeks to be retained in office pursuant to the provisions of section 25 of article VI. A person is a candidate for election if the person has publicly announced an intention to seek election to public office or retention of a judicial office and thereafter has received a contribution or made an expenditure in support of the candidacy. A person remains a candidate for purposes of this Article so long as the candidate maintains a registered candidate committee. A person who maintains a candidate committee after an election cycle, but who has not publicly announced an intention to seek election to public office in the next or any subsequent election cycle, is a candidate for purposes of this article.

(3) "Candidate committee" means a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. A contribution to a candidate shall be deemed a contribution to the candidate's candidate committee. A candidate shall have only one candidate committee. A candidate committee shall be considered open and active until affirmatively closed by the candidate or by action of the secretary of state.

(4) "Conduit" means a person who transmits contributions from more than one person, directly to a candidate committee. "Conduit" does not include the contributor's immediate family members, the candidate or campaign treasurer of the candidate committee receiving the contribution, a volunteer fund raiser hosting an event for a candidate committee, or a professional fund raiser if the fund raiser is compensated at the usual and customary rate.

(5) (a) "Contribution" means:

(I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;

(II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;

(III) The fair market value of any gift or loan of property made to any candidate committee, issue committee, political committee, small donor committee or political party;

(IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election.

(b) "Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, small donor committee, issue committee, or political party; a transfer by a membership organization of a portion of a member's dues to a small donor committee or political committee sponsored by such membership organization; or payments by a corporation or labor organization for the costs of establishing, administering, and soliciting funds from its own employees or members for a political committee or small donor committee.

(6) "Election cycle" means either:

(a) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the next general election for that office;

(b) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the special legislative election for that office; or

(c) The period of time beginning thirty-one days following the special legislative election for the particular office and ending thirty days following the next general election for that office.

(7) (a) "Electioneering communication" means any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:

(I) Unambiguously refers to any candidate; and

(II) Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election; and

(III) Is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.

(b) "Electioneering communication" does not include:

(I) Any news Articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;

(II) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(III) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(IV) Any communication that refers to any candidate only as part of the popular name of a bill or statute.

(8) (a) "Expenditure" means any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a

candidate or supporting or opposing a ballot issue or ballot question. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

(b) "Expenditure" does not include:

(I) Any news Articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;

(II) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(III) Spending by persons, other than political parties, political committees and small donor committees, in the regular course and scope of their business or payments by a membership organization for any communication solely to members and their families;

(IV) Any transfer by a membership organization of a portion of a member's dues to a small donor committee or political committee sponsored by such membership organization; or payments made by a corporation or labor organization for the costs of establishing, administering, or soliciting funds from its own employees or members for a political committee or small donor committee.

(9) "Independent expenditure" means an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate. Expenditures that are controlled by or coordinated with a candidate or candidate's agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.

(10) (a) "Issue committee" means any person, other than a natural person, or any group of two or more persons, including natural persons:

(I) That has a major purpose of supporting or opposing any ballot issue or ballot question;

or

(II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

(b) "Issue committee" does not include political parties, political committees, small donor committees, or candidate committees as otherwise defined in this section.

(c) An issue committee shall be considered open and active until affirmatively closed by such committee or by action of the appropriate authority.

(11) "Person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons.

(12) (a) "Political committee" means any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.

(b) "Political committee" does not include political parties, issue committees, or candidate committees as otherwise defined in this section.

(c) For the purposes of this Article, the following are treated as a single political committee:

(I) All political committees established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All political committees established, financed, maintained, or controlled by a single labor organization; except that, any political committee established, financed, maintained, or controlled by a local unit of the labor organization which has the authority to make a decision independently of the state and national units as to which candidates to support or oppose shall be deemed separate from the political committee of the state and national unit;

(III) All political committees established, financed, maintained, or controlled by the same political party;

(IV) All political committees established, financed, maintained, or controlled by substantially the same group of persons.

(13) "Political party" means any group of registered electors who, by petition or assembly, nominate candidates for the official general election ballot. "Political party" includes affiliated party organizations at the state, county, and election district levels, and all such affiliates are considered to be a single entity for the purposes of this Article, except as otherwise provided in section 7.

(14) (a) "Small donor committee" means any political committee that has accepted contributions only from natural persons who each contributed no more than fifty dollars in the aggregate per year. For purposes of this section, dues transferred by a membership organization to a small donor committee sponsored by such organization shall be treated as pro-rata contributions from individual members.

(b) "Small donor committee" does not include political parties, political committees, issue committees, or candidate committees as otherwise defined in this section.

(c) For the purposes of this Article, the following are treated as a single small donor committee:

(I) All small donor committees established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All small donor committees established, financed, maintained, or controlled by a single labor organization; except that, any small donor committee established, financed, maintained, or controlled by a local unit of the labor organization which has the authority to make a decision independently of the state and national units as to which candidates to support or oppose shall be deemed separate from the small donor committee of the state and national unit;

(III) All small donor committees established, financed, maintained, or controlled by the same political party;

(IV) All small donor committees established, financed, maintained, or controlled by substantially the same group of persons.

(15) "Unexpended campaign contributions" means the balance of funds on hand in any candidate committee at the end of an election cycle, less the amount of all unpaid monetary obligations incurred prior to the election in furtherance of such candidacy.

Source: L. Initiated 2002: Entire Article added, **L. 2003**, p. 3615. For the effective date of this Article, see the editor's note following the Article heading.

Section 3. Contribution limits. (1) Except as described in subsections (2), (3), and (4) of this section, no person, including a political committee, shall make to a candidate committee, and no candidate committee shall accept from any one person, aggregate contributions for a primary or a general election in excess of the following amounts:

(a) Five hundred dollars to any one:

(I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;

(II) Secretary of state, state treasurer, or attorney general candidate committee; and

(b) Two hundred dollars to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee.

(2) No small donor committee shall make to a candidate committee, and no candidate committee shall accept from any one small donor committee, aggregate contributions for a primary or a general election in excess of the following amounts:

(a) Five thousand dollars to any one:

(I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;

(II) Secretary of state, state treasurer, or attorney general candidate committee; and

(b) Two thousand dollars to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee.

(3) (a) No political party shall accept aggregate contributions from any person, other than a small donor committee as described in paragraph (b) of this subsection (3), that exceed three thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twenty-five hundred dollars per year at the state level;

(b) No political party shall accept aggregate contributions from any small donor committee that exceed fifteen thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twelve thousand, five hundred dollars at the state level;

(c) No political party shall accept contributions that are intended, or in any way designated, to be passed through the party to a specific candidate's candidate committee;

(d) In the applicable election cycle, no political party shall contribute to any candidate committee more than twenty percent of the applicable spending limit set forth in section 4 of this Article.

(e) Any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election for purposes of paragraph (d) of this subsection (3);

(4) (a) It shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political party, and to make expenditures expressly advocating the election or defeat of a candidate; except that a corporation or labor organization may establish a political committee or small donor committee which may accept contributions or dues from employees, officeholders, shareholders, or members.

(b) The prohibition contained in paragraph (a) of this subsection (4) shall not apply to a corporation that:

(I) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(II) Has no shareholders or other persons with a claim on its assets or income; and

(III) Was not established by and does not accept contributions from business corporations or labor organizations.

(5) No political committee shall accept aggregate contributions or pro-rata dues from any person in excess of five hundred dollars per house of representatives election cycle.

(6) No candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law.

(7) No person shall act as a conduit for a contribution to a candidate committee.

(8) Notwithstanding any other section of this Article to the contrary, a candidate's candidate committee may receive a loan from a financial institution organized under state or federal law if the loan bears the usual and customary interest rate, is made on a basis that assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule. The contribution limits described in this section shall not apply to a loan as described in this subsection (8).

(9) All contributions received by a candidate committee, issue committee, political committee, small donor committee, or political party shall be deposited in a financial institution in a separate account whose title shall include the name of the committee or political party. All records pertaining to such accounts shall be maintained by the committee or political party for one-hundred eighty days following any general election in which the committee or party received

contributions unless a complaint is filed, in which case they shall be maintained until final disposition of the complaint and any consequent litigation. Such records shall be subject to inspection at any hearing held pursuant to this Article.

(10) No candidate committee, political committee, small donor committee, issue committee, or political party shall accept a contribution, or make an expenditure, in currency or coin exceeding one hundred dollars.

(11) No person shall make a contribution to a candidate committee, issue committee, political committee, small donor committee, or political party with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, political committee, small donor committee, or political party, nor shall any person make such reimbursement except as provided in subsection (8) of this section.

(12) No candidate committee, political committee, small donor committee, or political party shall knowingly accept contributions from:

(a) Any natural person who is not a citizen of the United States;

(b) A foreign government; or

(c) Any foreign corporation that does not have the authority to transact business in this state pursuant to Article 115 of title 7, C.R.S., or any successor section.

(13) Each limit on contributions described in subsections (1), (2), (3) (a), (3) (b) and (5) of this section, and subsection (14) of section 2, shall be adjusted by an amount based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver- Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest twenty-five dollars. The first adjustment shall be done in the first quarter of 2007 and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section.

Source: L. Initiated 2002: Entire article added, L. 2003, p. 3619. For the effective date of this Article, see the editor's note following the Article heading.

Section 4. Voluntary campaign spending limits. (1) Candidates may certify to the secretary of state that the candidate's candidate committee shall not exceed the following spending limits for the applicable election cycle:

(a) Two and one-half million dollars combined for a candidate for governor and governor and lieutenant governor as joint candidates under 1-1-104, C.R.S., or any successor section;

(b) Five hundred thousand dollars for a candidate for secretary of state, attorney general, or treasurer;

(c) Ninety thousand dollars for a candidate for the state senate;

(d) Sixty-five thousand dollars for a candidate for the state house of representatives, state board of education, regent of the university of Colorado, or district attorney.

(2) Candidates accepting the campaign spending limits set forth above shall also agree that their personal contributions to their own campaign shall be counted as political party contributions and subject to the aggregate limit on such contributions set forth in section 3 of this article.

(3) Each candidate who chooses to accept the applicable voluntary spending limit shall file a statement to that effect with the secretary of state at the time that the candidate files a candidate affidavit as currently set forth in section 1-45-110(1), C.R.S., or any successor section. Acceptance of the applicable voluntary spending limit shall be irrevocable except as set forth in subsection (4) of this section and shall subject the candidate to the penalties set forth in section 10 of this Article for exceeding the limit.

(4) If a candidate accepts the applicable spending limit and another candidate for the same office refuses to accept the spending limit, the accepting candidate shall have ten days in which to withdraw acceptance. The accepting candidate shall have this option of withdrawing acceptance after each additional non-accepting candidate for the same office enters the race.

(5) The applicable contribution limits set forth in section 3 of this Article shall double for any candidate who has accepted the applicable voluntary spending limit if:

(a) Another candidate in the race for the same office has not accepted the voluntary spending limit; and

(b) The non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit.

(6) Only those candidates who have agreed to abide by the applicable voluntary spending limit may advertise their compliance. All other candidates are prohibited from advertising, or in any way implying, their acceptance of voluntary spending limits.

(7) Each spending limit described in subsection (1) of this section shall be adjusted by an amount based upon the percentage change over a four year period in the united states bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest twenty-five dollars. The first adjustment shall be done in the first quarter of 2007 and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules promulgated in accordance with Article 4 of title 24, C.R.S., or any successor section.

Source: L. Initiated 2002: Entire Article added, **L. 2003**, p. 3622. For the effective date of this Article, see the editor's note following the Article heading.

Section 5. Independent expenditures. (1) Any person making an independent expenditure in excess of one thousand dollars per calendar year shall deliver notice in writing to the secretary of state of such independent expenditure, as well as the amount of such expenditure, and a detailed description of the use of such independent expenditure. The notice shall specifically state the name of the candidate whom the independent expenditure is intended to support or oppose. Each independent expenditure in excess of one-thousand dollars shall require the delivery of a new notice. Any person making an independent expenditure within thirty days of a primary or general election shall deliver such notice within forty-eight hours after obligating funds for such expenditure.

(2) Any person making an independent expenditure in excess of one thousand dollars shall disclose, in the communication produced by the expenditure, the name of the person making the expenditure and the specific statement that the advertisement of material is not authorized by any candidate. Such disclosure shall be prominently featured in the communication.

(3) Expenditures by any person on behalf of a candidate for public office that are coordinated with or controlled by the candidate or the candidate's agent, or political party shall be considered a contribution to the candidate's candidate committee, or the political party, respectively.

(4) This section 5 applies only to independent expenditures made for the purpose of expressly advocating the defeat or election of any candidate.

Source: L. Initiated 2002: Entire Article added, **L. 2003**, p. 3623. For the effective date of this Article, see the editor's note following the Article heading.

Section 6. Electioneering communications. (1) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall submit reports to the secretary of state in accordance with the schedule currently set forth in 1-45-108 (2), C.R.S., or

any successor section. Such reports shall include spending on such electioneering communications, and the name, and address, of any person that contributes more than two hundred and fifty dollars per year to such person described in this section for an electioneering communication. In the case where the person is a natural person, such reports shall also include the occupation and employer of such natural person. The last such report shall be filed thirty days after the applicable election.

(2) Notwithstanding any section to the contrary, it shall be unlawful for a corporation or labor organization to provide funding for an electioneering communication; except that any political committee or small donor committee established by such corporation or labor organization may provide funding for an electioneering communication.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3623. For the effective date of this Article, see the editor's note following the Article heading.

Section 7. Disclosure. The disclosure requirements relevant to candidate committees, political committees, issue committees, and political parties, that are currently set forth in section 1-45-108, C.R.S., or any successor section, shall be extended to include small donor committees. The disclosure requirements of section 1-45-108, C.R.S., or any successor section, shall be extended to require disclosure of the occupation and employer of each person who has made a contribution of one hundred dollars or more to a candidate committee, political committee, issue committee, or political party. For purposes of this section and 1-45-108, C.R.S., or any successor section, a political party shall be treated as separate entities at the state, county, district, and local levels.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3624. For the effective date of this Article, see the editor's note following the Article heading.

Section 8. Filing - where to file - timeliness. The secretary of state shall promulgate rules relating to filing in accordance with article 4 of title 24, C.R.S., or any successor section. The rules promulgated pursuant to this section shall extend section 1- 45-109, C.R.S., or any successor section to apply to small donor committees.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3624. For the effective date of this Article, see the editor's note following the Article heading.

Section 9. Duties of the secretary of state - enforcement. (1) The secretary of state shall:

(a) Prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this article and make such forms and instructions available to the public, municipal clerks, and county clerk and recorders free of charge;

(b) Promulgate such rules, in accordance with Article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of this Article;

(c) Prepare forms for candidates to declare their voluntary acceptance of the campaign spending limits set forth in section 4 of this Article. Such forms shall include an acknowledgment that the candidate voluntarily accepts the applicable spending limit and that the candidate swears to abide by those spending limits. These forms shall be signed by the candidate under oath, notarized, filed with the secretary of state, and available to the public upon request;

(c) Maintain a filing and indexing system consistent with the purposes of this Article;

(e) Make the reports and statements filed with the secretary of state's office available immediately for public inspection and copying. The secretary of state may charge a reasonable

fee for providing copies of reports. No information copied from such reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;

(f) Refer any complaints filed against any candidate for the office of secretary of state to the attorney general. Any administrative law judge employed pursuant to this section shall be appointed pursuant to part 10 of Article 30 of title 24, C.R.S., or any successor section. Any hearing conducted by an administrative law judge employed pursuant to subsection (2) of this section shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., or any successor section.

(2) (a) Any person who believes that a violation of section 3, section 4, section 5, section 6, section 7, or section 9 (1) (e), of this Article, or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117 C.R.S., or any successor sections, has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint. The administrative law judge shall hold a hearing within fifteen days of the referral of the complaint, and shall render a decision within fifteen days of the hearing. The defendant shall be granted an extension of up to thirty days upon defendant's motion, or longer upon a showing of good cause. If the administrative law judge determines that such violation has occurred, such decision shall include any appropriate order, sanction, or relief authorized by this Article. The decision of the administrative law judge shall be final and subject to review by the court of appeals, pursuant to section 24-4-106 (11), C.R.S., or any successor section. The secretary of state and the administrative law judge are not necessary parties to the review. The decision maybe enforced by the secretary of state, or, if the secretary of state does not file an enforcement action within thirty days of the decision, in a private cause of action by the person filing the complaint. Any private action brought under this section shall be brought within one year of the date of the violation in state district court. The prevailing party in a private enforcement action shall be entitled to reasonable attorneys fees and costs.

(b) The attorney general shall investigate complaints made against any candidate for the office of secretary of state using the same procedures set forth in paragraph (a) of this subsection (2). Complainant shall have the same private right of action as under paragraph (a) of this subsection (2).

(c) A subpoena issued by an administrative law judge requiring the production of documents by an issue committee shall be limited to documents pertaining to contributions to, or expenditures from, the committee's separate account established pursuant to section 3(9) of this Article to support or oppose a ballot issue or ballot question. A subpoena shall not be limited in this manner where such issue committee fails to form a separate account through which a ballot issue or ballot question is supported or opposed.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3624. For the effective date of this Article, see the editor's note following the Article heading.

Section 10. Sanctions. (1) Any person who violates any provision of this Article relating to contribution or voluntary spending limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent in violation of the applicable provision of this Article. Candidates shall be personally liable for penalties imposed upon the candidate's committee.

(2) (a) The appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of this Article, or sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due. Upon imposition of a penalty pursuant to this subsection (2), the appropriate officer shall send the person upon whom the

penalty is being imposed proper notification by certified mail of the imposition of the penalty. If an electronic mail address is on file with the secretary of state, the secretary of state shall also provide such notification by electronic mail. Revenues collected from fees and penalties assessed by the secretary of state or revenues collected in the form of payment of the secretary of state's attorney fees and costs pursuant to this Article shall be deposited in the department of state cash fund created in section 24-21-104 (3), C.R.S., or any successor section.

(b) (I) Any person required to file a report with the secretary of state and upon whom a penalty has been imposed pursuant to this subsection (2) may appeal such penalty by filing a written appeal with the secretary of state no later than thirty days after the date on which notification of the imposition of the penalty was mailed to such person's last known address in accordance with paragraph (a) of this subsection (2). Except as provided in paragraph (c) of this subsection (2), the secretary shall refer the appeal to an administrative law judge. Any hearing conducted by an administrative law judge pursuant to this subsection (2) shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., or any successor section. The administrative law judge shall set aside or reduce the penalty upon a showing of good cause, and the person filing the appeal shall bear the burden of proof. The decision of the administrative law judge shall be final and subject to review by the court of appeals pursuant to section 24-4-106 (11), C.R.S., or any successor section.

(II) If the administrative law judge finds that the filing of an appeal brought pursuant to subparagraph (I) of this paragraph (b) was frivolous, groundless, or vexatious, the administrative law judge shall order the person filing the appeal to pay reasonable attorney fees and costs of the secretary of state in connection with such proceeding.

(c) Upon receipt by the secretary of state of an appeal pursuant to paragraph (b) of this subsection (2), the secretary shall set aside or reduce the penalty upon a showing of good cause.

(d) Any unpaid debt owing to the state resulting from a penalty imposed pursuant to this subsection (2) shall be collected by the state in accordance with the requirements of section 24-30-202.4, C.R.S., or any successor section.

(3) Failure to comply with the provisions of this article shall have no effect on the validity of any election.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3626. For the effective date of this Article, see the editor's note following the article heading.

Section 11. Conflicting provisions declared inapplicable. Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be inapplicable to the matters covered and provided for in this Article.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3627. For the effective date of this Article, see the editor's note following the article heading.

Section 12. Repeal of conflicting statutory provisions. Sections 1-45-103, 1-45-105.3, 1-45-107, 1-45-111, and 1-45-113 are repealed.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3627. For the effective date of this Article, see the editor's note following the article heading.

Section 13. APPLICABILITY AND EFFECTIVE DATE. The provisions of this article shall take effect on December 6, 2002 and be applicable for all elections thereafter. Legislation may be enacted to facilitate its operations, but in no way limiting or restricting the provisions of this Article or the powers herein granted.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3627. For the effective date of this Article, see the editor's note following the article heading.

Section 14. Severability. If any provision of this Article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Source: L. Initiated 2002: Entire article added, **L. 2003**, p. 3627. For the effective date of this Article, see the editor's note following the article heading.

ELECTION CAMPAIGN REGULATIONS

ARTICLE 45

Fair Campaign Practices Act

Editor's note: (1) This article was originally enacted in 1974. The substantive provisions of this article were repealed and reenacted by initiative in 1996, causing some addition, relocation, and elimination of sections as well as subject matter. The vote count on the measure at the general election held November 5, 1996, was as follows:

FOR: 928,148
AGAINST: 482,551

(2) For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1996; and the comparative table located in the back of the index.

Cross references: For public official disclosure law, see part 2 of article 6 of title 24.

Law reviews: For article, "Fair Campaign Practices Act: Killing Trees for Good Government", see 26 Colo. Law. 101 (September 1997). For article, "Public Moneys and Ballot Issues Under the Fair Campaign Practices Act", see 34 Colo. Law. 81 (September 2005).

1-45-101.	Short title.	1-45-110.	Candidate affidavit - disclosure statement.
1-45-102.	Legislative declaration.	1-45-111.	Duties of the secretary of state - enforcement. (Repealed)
1-45-103.	Definitions.	1-45-111.5.	Duties of the secretary of state - enforcement.
1-45-103.7.	Contribution limits - definitions.	1-45-112.	Duties of municipal clerk and county clerk and recorder.
1-45-104.	Contribution limits. (Repealed)	1-45-112.5.	Immunity from liability for fine or penalty.
1-45-105.	Voluntary campaign spending limits. (Repealed)	1-45-113.	Sanctions. (Repealed)
1-45-105.3.	Contribution limits. (Repealed)	1-45-114.	Expenditures - political advertising - rates and charges.
1-45-105.5.	Contributions to members of general assembly and governor during consideration of legislation.	1-45-115.	Encouraging withdrawal from campaign prohibited.
1-45-106.	Unexpended campaign contributions.	1-45-116.	Home rule counties and municipalities.
1-45-107.	Independent expenditures. (Repealed)	1-45-117.	State and political subdivisions - limitations on contributions.
1-45-108.	Disclosure.	1-45-118.	Severability.
1-45-108.5.	Political organizations - disclosure.		
1-45-109.	Filing - where to file - timeliness.		

1-45-101. Short title. This article shall be known and may be cited as the "Fair Campaign Practices Act".

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-101 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-102. Legislative declaration. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-102 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Appropriate officer" shall have the same meaning as set forth in section 2 (1) of article XXVIII of the state constitution.

(2) "Candidate" shall have the same meaning as set forth in section 2 (2) of article XXVIII of the state constitution.

(3) "Candidate committee" shall have the same meaning as set forth in section 2 (3) of article XXVIII of the state constitution.

(4) "Candidate committee account" shall mean the account established by a candidate committee with a financial institution pursuant to section 3 (9) of article XXVIII of the state constitution.

(5) "Conduit" shall have the same meaning as set forth in section 2 (4) of article XXVIII of the state constitution.

(6) (a) "Contribution" shall have the same meaning as set forth in section 2 (5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(c) "Contribution" also includes:

(I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this article, "domestic corporation" shall mean a for-profit or nonprofit corporation incorporated under and subject to the laws of this state, and "foreign corporation" shall mean a corporation incorporated under and subject to the laws of another state or foreign country.

(8) "Election cycle" shall have the same meaning as set forth in section 2 (6) of article XXVIII of the state constitution.

(9) "Electioneering communication" shall have the same meaning as set forth in section 2 (7) of article XXVIII of the state constitution.

(10) "Expenditure" shall have the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(11) "Independent expenditure" shall have the same meaning as set forth in section 2 (9) of article XXVIII of the state constitution.

(12) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.

(13) "Person" shall have the same meaning as set forth in section 2 (11) of article XXVIII of the state constitution.

(14) "Political committee" shall have the same meaning as set forth in section 2 (12) of article XXVIII of the state constitution.

(14.5) "Political organization" means a political organization defined in section 527 (e) (1) of the federal "Internal Revenue Code of 1986", as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code. "Political organization" shall not be construed to have the same meaning as "political organization" as defined in section 1-1-104 (24) for purposes of the "Uniform Election Code of 1992", articles 1 to 13 of this title.

(15) "Political party" shall have the same meaning as set forth in section 2 (13) of article XXVIII of the state constitution.

(16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.

(16.5) "Spending" means funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

(17) "Subsidiary" means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) "Unexpended campaign contributions" shall have the same meaning as set forth in section 2 (15) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) added and (8) amended, p. 223, § 1, effective April 10; (1.5) amended and (14) added, p. 954, § 1, effective May 27. **L. 99:** (5) amended, p. 1390, § 12, effective June 4. **L. 2000:** (1.3), (4)(a)(V), and (4.5) added and (4)(a)(III), (10)(b), and (12) amended, pp. 122, 123, §§ 2, 3, effective March 15; (8) amended, p. 1724, § 1, effective June 1. **L. 2002:** (8)(a)(I) amended and (8)(a)(III) added, p. 198, § 1, effective April 3; (1.5) and (2) amended, p. 1576, § 1, effective July 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002. **L. 2003:** Entire section RC&RE, p. 2156, § 1, effective June 3. **L. 2007:** (7) amended, p. 1766, § 1, effective June 1; (6)(c), (14.5), and (16.5) added, pp. 1225, 1224, §§ 2, 1, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-103 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

(3) Section 4 of chapter 289, Session Laws of Colorado 2007, provides that the act enacting subsections (6)(c), (14.5), and (16.5) applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2007, and for any election cycle or calendar year commencing after July 1, 2007, whichever is applicable.

ANNOTATION

Annotator's note. Since § 1-45-103 is similar to § 1-45-103 as it existed prior to its repeal in 2002, relevant cases construing that provision and its predecessors have been included in the annotations to this section.

It is apparent from the plain language of subsection (2) that a candidate committee may be comprised of one person only and that the candidate acting alone may be a candidate committee. Thus, a candidate committee who acts alone for the purpose of receiving campaign contributions or making campaign expenditures is a candidate committee subject to the disclosure requirements of this article. Therefore, the expenditures made by a candidate from the candidate's personal funds before certification of his or her committee were either contributions to the ultimately certified candidate committee or expenditures by a separate campaign committee composed of the candidate alone. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of *Buckley v. Valeo*, 424 U.S. 1 (1976), the court holds that the definition of "contribution" contained in subsection (4) does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Phrases unconstitutional. The phrase in subsection (7), "which unambiguously refer to any specific public office or candidate for such office, but does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business and political messages sent solely to

their members[.]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political*

Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The phrase in subsection (11), "or which unambiguously refers to such candidate[.]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The court concluded that the unconstitutional phrases were severable and declared subsections (7) and (11) invalid only insofar as they reach beyond that which

may constitutionally be regulated. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d

1174 (10th Cir. 2000).

Term "independent expenditure" in subsection (7) permits the regulation of only those expenditures that are used for communications that expressly advocate the election or defeat of a clearly identified candidate. This standard includes the words and phrases listed in *Buckley v. Valeo*, 424 U.S. 1 (1976), and other substantially similar or synonymous words. This approach remains focused on actual words, as contrasted with images, symbols, or other contextual factors, provides adequate notice in light of due process concerns, and strikes an appropriate balance between trying to preserve the goals of campaign finance reform and protecting political speech. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

None of the advertisements of so-called educational committee at issue amounted to "express advocacy" as that term is applied in *Buckley* and progeny and, therefore, so-called educational committee was not subject to the requirements of the Fair Campaign Practices Act. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The term "issue" in subsection (8) includes an initiative that has gone through the title-setting process, but has not been formally certified for the election ballot. To

construe the term to include only measures actually placed on the ballot would frustrate the purposes of the Campaign Reform Act by allowing groups to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not to sign a particular petition, thus significantly influencing its success or failure. *Colo. for Family Values v. Meyer*, 936 P.2d 631 (Colo. App. 1997).

Telephone opinion poll was not "electioneering" and thus did not constitute an "electioneering communication" within the meaning of subsection (9) of this section and § 6 of article XXVIII of the state constitution. In giving effect to the intent of the electorate, court gives term "communication" its plain and ordinary meaning. Court relies upon dictionary definitions of "communication" that contemplate imparting a message to, rather than having mere contact with, another party. In reviewing scripts used by telephone opinion pollster, "communication" occurred because "facts, information, thoughts, or opinions" were "imparted, transmitted, interchanged, expressed, or exchanged" by pollster to those it called. Telephone opinion pollster, therefore, communicated information to members of the electorate during its opinion poll. *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (Colo. App. 2006).

Telephone opinion poll, however, did not satisfy meaning of electioneering. Colorado electorate intended article XXVIII to regulate communication that expresses "electorate advocacy" and tends to "influence the outcome of Colorado elections". This conclusion is reinforced by plain and ordinary meaning of term "electioneering". Court relies upon dictionary definitions suggesting that "electioneering" is defined by such activities as taking an active part in an election campaign, campaigning for one's own election, or trying to sway public opinion especially by the use of propaganda and that "campaigning" means influencing the public to support a particular candidate, ticket, or measure. Here, telephone opinion poll did not seek to influence voters or sway public opinion but instead merely asked neutral questions to collect data and measure public opinion. Accordingly, telephone opinion poll did not constitute an "electioneering communication" under subsection (9) of this section and article XXVIII of the state constitution. *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (Colo. App. 2006).

The term "issue committee" covers only those issue committees that were formed for the purpose of supporting or opposing a ballot initiative. An association that was formed and operated for purposes other than "accepting contributions or making expenditures to support or oppose any ballot issue or ballot question" does not become an "issue committee" as defined in this section if, at a future point in time, it engages in those activities with regard to a specific ballot issue or ballot question. *Common Sense Alliance v. Davidson*, 995 P.2d 748 (Colo. 2000).

A "political committee" is formed when two or more persons associate themselves with the original purpose of making independent expenditures. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The term "political committee" in subsection (10) includes a for-profit corporation which makes contributions, contributions in kind, or expenditures to or on behalf of state political campaigns out of its ordinary corporate treasury. Therefore, such corporation is required to file a statement of organization, to report its contributions, contributions in kind, and expenditures, and otherwise to comply with any filing and reporting requirements of the "Campaign Reform Act of 1974". *Colo. Common Cause v. Meyer*, 758 P.2d 153 (Colo. 1988) (decided prior to 1988 amendment to subsection (10)).

While the stated purposes for the formation of an organization may be one criterion upon which to determine whether it is a "political committee", such purposes are not conclusive. To so hold would permit regulable conduct to escape regulation merely because the stated purposes were misleading, ambiguous, fraudulent, or all three. In addition, such a holding would exalt form over substance and would almost entirely eviscerate the Fair Campaign Practices Act and make a mockery of legitimate attempts at campaign finance reform. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The use of the disjunctive term "or" in subsection (11) renders the definition of "political message" applicable to messages that "unambiguously refer to a candidate", even if such messages do not also "advocate the election or defeat" of that candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

To qualify as a political message under subsection (11), a message need only: (1) Be delivered by telephone, any print or electronic media, or other written material, and (2) either (a) advocate the election or defeat of any candidate or (b) unambiguously refer to such candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Voter guides that unambiguously refer to specific candidates but do not expressly advocate the election or defeat of any candidate constitute "political messages" as defined in subsection (11). Therefore, the funds expended to produce and disseminate the voter guides are subject to regulation as "independent expenditures" as the term is defined in subsection (7). *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Administrative law judge (ALJ) did not err in concluding that definition of "expenditures" did not apply to metropolitan district boards. Respondents had argued that the metropolitan districts qualified as "persons" that could expend payments on behalf of issue committee supporting ballot issue. Even if the definition of "person" could be stretched to cover political subdivisions of the state such as metropolitan districts, respondents failed to explain how the payments at issue were "made with the prior knowledge and consent of an agent" of the issue committee that was not yet formed in order to bring such payments within the definition of "expenditure". *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

ALJ did not err by interpreting "expenditure" to occur when a payment is made and when there is a contractual agreement and the amount is determined. The use of the disjunctive "or" in the definition of

"expenditure" indicates that an expenditure is made if either criterion is met after the ballot title is submitted. *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

1-45-103.7. Contribution limits - definitions. (1) Nothing in article XXVIII of the state constitution or this article shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee.

(2) A political committee may receive and accept moneys contributed to such committee by a corporation or labor organization pursuant to subsection (1) of this section for disbursement to a candidate committee or political party without depositing such moneys in an account separate from the account required to be established for the receipt and acceptance of all contributions by all committees or political parties in accordance with section 3 (9) of article XXVIII of the state constitution.

(3) A candidate committee may accept:

(a) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a primary election at any time after the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot; or

(b) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a general election at any time prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot.

(4) A candidate committee may expend contributions received and accepted for a general election prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot. A candidate committee established in the name of a candidate who wins the primary election may expend contributions received and accepted for a primary election in the general election.

(5) (a) No limited liability company shall make any contribution to a candidate committee or political party if one or more of the individual members of the limited liability company is:

(I) A corporation;

(II) A labor organization;

(III) A natural person who is not a citizen of the United States;

(IV) A foreign government;

(V) A professional lobbyist, volunteer lobbyist, or the principal of a professional or volunteer lobbyist, and the contribution is prohibited under section 1-45-105.5 (1); or

(VI) Otherwise prohibited by law from making the contribution.

(b) No limited liability company shall make any contribution to a political committee if one or more of the individual members of the limited liability company is:

(I) An entity formed under and subject to the laws of a foreign country;

(II) A natural person who is not a citizen of the United States; or

(III) A foreign government.

(c) Notwithstanding any other provision of this subsection (5), no limited liability company shall make any contribution to a candidate committee or political party if either the limited liability company has elected to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 or any successor provision or the shares of the limited liability company are publicly traded. A contribution by a limited liability company with a single natural person member that does not elect to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 shall be attributed only to the single natural person member.

(d) (I) Any limited liability company that is authorized to make a contribution shall, in writing, affirm to the candidate committee, political committee, or political party to which it has made a contribution, as applicable, that it is authorized to make a contribution, which affirmation shall also state the names and addresses of all of the individual members of the limited liability company. No candidate

committee, political committee, or political party shall accept a contribution from a limited liability company unless the written affirmation satisfying the requirements of this paragraph (d) is provided before the contribution is deposited by the candidate committee, political committee, or political party. The candidate committee, political committee, or political party receiving the contribution shall retain the written affirmation for not less than one year following the date of the end of the election cycle during which the contribution is received.

(II) Any contribution by a limited liability company, and the aggregate amount of contributions from multiple limited liability companies attributed to a single member of any such company under this subparagraph (II), shall be subject to the limits governing such contributions under section 3 of article XXVIII of the state constitution. A limited liability company that makes any contribution to a candidate committee, political committee, or political party shall, at the time it makes the contribution, provide information to the recipient committee or political party as to how the contribution is to be attributed among the members of the limited liability company. The limited liability company shall then attribute the contribution to its members against the aggregate contribution limit applicable to multiple limited liability companies under this subparagraph (II); except that the aggregate amount of contributions from multiple limited liability companies attributed to a single member shall not exceed the contribution limits in section 3 of article XXVIII of the state constitution. Nothing in this subparagraph (II) shall be construed to restrict a natural person from making a contribution in his or her own name to any committee or political party to the extent authorized by law.

(6) No foreign corporation shall be permitted to make any contribution under article XXVIII of the state constitution or this article that a domestic corporation is prohibited from making under article XXVIII of the state constitution or this article.

(7) (a) Any person who believes that a violation of subsection (5) or (6) of this section has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The complaint shall be subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution.

(b) Any person who has violated any of the provisions of paragraph (a), (b), or (c) of subsection (5) or subsection (6) of this section shall be subject to a civil penalty of at least double and up to five times the amount contributed or received in violation of the applicable provision.

(c) Any person who has violated any of the provisions of subparagraph (I) of paragraph (d) of subsection (5) of this section shall be subject to a civil penalty of fifty dollars per day for each day that the written affirmation regarding the membership of a limited liability company has not been filed with or retained by the candidate committee, political committee, or political party to which a contribution has been made.

(8) As used in this section, "limited liability company" includes any form of domestic entity as defined in section 7-90-102 (13), C.R.S., or foreign entity as defined in section 7-90-102 (23), C.R.S.; except that, as used in this section, "limited liability company" shall not include a domestic corporation, a domestic cooperative, a domestic nonprofit association, a domestic nonprofit corporation, a foreign corporation, a foreign cooperative, a foreign nonprofit association, or a foreign nonprofit corporation, as those terms are defined in section 7-90-102, C.R.S.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. L. 2004: Entire section amended, p. 863, § 1, effective May 21. L. 2007: (5), (6), (7), and (8) added, p. 1766, § 2, effective June 1.

Editor's note: Section 3 of chapter 396, Session Laws of Colorado 2007, provides that the act enacting subsections (5), (6), (7), and (8) applies to the portion of any election cycle or for the portion of the calendar year remaining after June 1, 2007, and for any election cycle or calendar year commencing after June 1, 2007, whichever is applicable.

1-45-104. Contribution limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. L. 98: (13)(a)(II) amended, p. 632, § 2, effective May 6; (13)(c) amended, p. 950, § 1, effective May 27; (14) added, p. 955, § 2,

effective May 27. **L. 99:** IP(2) amended, p. 1391, § 13, effective June 4. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-111 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105. Voluntary campaign spending limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (3) amended, p. 951, § 2, effective May 27. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-112 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105.3. Contribution limits. (Repealed)

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. **L. 2002:** (4)(a.5) added, p. 1929, § 1, effective June 7. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Subsections (7), (8), (9), (10), and (11) were formerly numbered as 1-45-104 (9), (10), (11), (12), and (14) respectively.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

ANNOTATION

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of *Buckley v. Valeo*, 424 U.S. 1 (1976),

the court holds that the definition of "contribution" does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation. (1) (a) No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to, or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session;

(II) (A) The governor or a candidate for governor when the general assembly is in regular session or when any measure adopted by the general assembly in a regular session is pending before the governor for approval or disapproval; or

(B) The lieutenant governor, the secretary of state, the state treasurer, the attorney general, or a candidate for any of such offices when the general assembly is in regular session.

(b) As used in this subsection (1):

(I) "Principal" means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. One does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist.

(II) The terms "professional lobbyist" and "volunteer lobbyist" shall have the meanings ascribed to them in section 24-6-301, C.R.S.

(c) (I) Nothing contained in this subsection (1) shall be construed to prohibit lobbyists and their principals from raising money when the general assembly is in regular session or when regular session legislation is pending before the governor, except as specifically prohibited in paragraph (a) of this subsection (1).

(II) Nothing contained in this subsection (1) shall be construed to prohibit a lobbyist or principal of a lobbyist from participating in a fund-raising event of a political party when the general assembly is in regular session or when regular session legislation is pending before the governor, so long as the purpose of the event is not to raise money for specifically designated members of the general assembly, specifically designated candidates for the general assembly, the governor, or specifically designated candidates for governor.

(III) A payment by a lobbyist or a principal of a lobbyist to a political party to participate in such a fund-raising event shall be reported as a contribution to the political party pursuant to section 1-45-108; except that, if the lobbyist or principal of a lobbyist receives a meal in return for a portion of the payment, only the amount of the payment in excess of the value of the meal shall be considered a contribution to the political party. The political party shall determine the value of the meal received for such payment, which shall approximate the actual value of the meal.

(IV) A gift of a meal described in subparagraph (III) of this paragraph (c) by a lobbyist or a principal of a lobbyist to an incumbent in or a candidate elected to any office described in paragraph (a) of this subsection (1) shall be reported as follows:

(A) The lobbyist shall report the value of the meal in the lobbyist disclosure statement filed pursuant to section 24-6-302, C.R.S.

(B) The incumbent or candidate shall report the value of the meal in the public official disclosure statement filed pursuant to section 24-6-203, C.R.S.

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15.

Editor's note: This section was formerly numbered as 1-45-104 (13).

1-45-106. Unexpended campaign contributions. (1) (a) (I) Subject to the requirements of section 3 (3) (e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 1-45-105.3 (4) (b) and (c), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(I) Voter registration;

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

(III) Postsecondary educational scholarships;

(IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;

(V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3) (e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-109 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. *Citizens for Responsible Gov't State Political Action Comm. v. Buckley*, 60 F. Supp.2d 1066 (D. Colo. 1999).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. To accomplish the purpose of subsection (5), it is necessary only that a candidate committee report the amount of

unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds

reportedly available to a candidate committee and would be confusing to those who read the report. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

Candidate committee permitted to use unexpended contributions to pay elected state senator's legal fees. Although legal fees are not specifically mentioned as permissible expenses under subsection (1)(b)(V), the words "including, but not limited to," indicate that the statute merely illustrates the kinds of

expenses that may be regarded as directly related to an elected official's duties. Here, the legal fees may properly be characterized as directly related to official duties of elected state senator. The senator's duties include filing

periodic reports with the secretary of state, and the fees were reasonably necessary to demonstrate that senator and his or her committee had properly performed this duty. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

1-45-107. Independent expenditures. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-110.5 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-108. Disclosure. (1) (a) (I) All candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

(II) In the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making such contribution of two hundred fifty dollars or more is a natural person, the disclosure required by this section shall also include the person's occupation and employer.

(b) (Deleted by amendment, L. 2003, p. 2158, § 3, effective June 3, 2003.)

(c) A candidate committee in a special district election shall not be required to file reports under this section until the committee has received contributions or made expenditures exceeding twenty dollars in the aggregate.

(d) For purposes of this section, a political party shall be treated as a separate entity at the state, county, district, and local levels.

(e) A candidate's candidate committee may reimburse the candidate for expenditures the candidate has made on behalf of the candidate committee. Any such expenditures may be reimbursed at

any time. Notwithstanding any other provision of law, any expenditure reimbursed to the candidate by the candidate's candidate committee within the election cycle during which the expenditure is made shall be treated only as an expenditure and not as a contribution to and an expenditure by the candidate's candidate committee. Notwithstanding the date on which any such expenditure is reimbursed, the expenditure shall be reported at the time it is made in accordance with the requirements of this section.

(2) (a) (I) Except as provided in subsections (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state shall be filed:

(A) Quarterly in off-election years no later than the fifteenth calendar day following the end of the applicable quarter;

(B) On the first Monday in July and on each Monday every two weeks thereafter before the primary election;

(C) On the first day of each month beginning the sixth full month before the major election; except that no monthly report shall be required on the first day of the month in which the major election is held;

(D) On the first Monday in September and on each Monday every two weeks thereafter before the major election;

(E) Thirty days after the major election in election years; and

(F) Fourteen days before and thirty days after a special legislative election held in an off-election year.

(II) Such reports that are required to be filed with the county clerk and recorder or with the municipal clerk shall be filed on the twenty-first day and on the Friday before and thirty days after the primary election, where applicable, and the major election in election years and annually in off-election years on the first day of the month in which the anniversary of the major election occurs.

(III) For purposes of this section, "election year" means every even numbered year for political parties and political committees and each year in which the particular candidate committee's candidate, or issue committee's issue, appears on the ballot; and "major election" means the election that decides an issue committee's issue and the election that elects a person to the public office sought by the candidate committee's candidate.

(IV) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(b) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee or party.

(c) All reports filed with the secretary of state pursuant to this subsection (2) shall be for the reporting periods established pursuant to rules promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(d) A candidate committee for a former officeholder or a person not elected to office that has no change in the balance of funds maintained by such committee, receives no contributions, makes no expenditures, and enters into no obligations during a reporting period shall not be required to file a report under this section for such period.

(e) The reporting period for all reports required to be filed with the county clerk and recorder or with the municipal clerk shall close five calendar days prior to the effective date of filing.

(2.3) Repealed.

(2.5) In addition to any report required to be filed with the secretary of state under this section, all candidate committees, political committees, issue committees, and political parties shall file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election or general election. This report shall be filed with the secretary of state no later than twenty-four hours after receipt of said contribution.

(2.7) Any candidate or candidate committee supporting any candidate, including an incumbent, in a recall election, shall file reports of contributions and expenditures with the appropriate officer fourteen and seven days before the recall election and thirty days after the recall election.

(3) Except as otherwise provided in subsection (3.5) of this section, all candidate committees, political committees, issue committees, small donor committees, and political parties shall register with the appropriate officer before accepting or making any contributions. Registration shall include a statement listing:

- (a) The organization's full name, spelling out any acronyms used therein;
- (b) A natural person authorized to act as a registered agent;
- (c) A street address and telephone number for the principle place of operations;
- (d) All affiliated candidates and committees;
- (e) The purpose or nature of interest of the committee or party;

(f) Any intent of the candidate committee, political committee, issue committee, small donor committee, or political party to electronically file reports required by this article that may be filed electronically on a web site operated and maintained by the secretary of state pursuant to section 1-45-109.

(3.5) Any political committee that has registered with the federal election commission may file with the appropriate officer a copy of the registration filed with the federal election commission and, insofar as such registration contains substantially the same information required by subsection (3) of this section, the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of this section and, therefore, shall be authorized to accept or make contributions as permitted by law. Any political committee that satisfies the requirements of this subsection (3.5) shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees.

(4) For purposes of subsection (3) of this section, a political committee in existence on January 1, 1997, shall register with the secretary of state on or before April 1, 1997, pursuant to the requirements of this act.

(5) The registration and reporting requirements of this section shall not apply to that part of the organizational structure of a political party which is responsible for only the day-to-day operations of such political party at the national level if copies of the reports required to be filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended, are filed with the secretary of state and include the information required by this section.

(6) Any issue committee whose purpose is the recall of any elected official shall file a committee registration with the appropriate officer within ten business days of receiving its first contribution. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1), (2)(a), and IP(3) amended, p. 223, § 2, effective April 10; (2)(c) added, p. 951, § 3, effective May 27. **L. 99:** (2)(a) amended and (2)(c)(V) and (2)(c)(VI) added, p. 1391, §§ 14, 15, effective June 4. **L. 2000:** (2)(a) and (2)(c) amended and (2)(d), (2.3), and (2.5) added, pp. 124, 125, §§ 5, 6, effective March 15; (1) amended, p. 1725, § 2, effective June 1; (2)(e) added, p. 791, § 2, effective August 2. **L. 2001:** (3)(f) added, p. 808, § 1, effective August 8; (2.3) amended, p. 1111, § 2, effective September 1. **L. 2002:** IP(2)(a)(I) and (6) amended and (2.7) added, p. 198, § 2, effective April 3; (1)(c) added, p. 1640, § 33, effective June 7. **L. 2003:** (1)(a), (1)(b), (2.3)(a), (2.5), IP(3), and (3)(f) amended and (1)(d) added, p. 2158, § 3, effective June 3. **L. 2004:** (1)(e) and (3.5) added and IP(3) amended, p. 864, §§ 2, 3, effective May 21. **L. 2007:** IP(2)(a)(I) amended, p. 2017, § 2, effective June 1; IP(2)(a)(I) and (2)(a)(I)(B) amended, p. 1299, § 2, effective July 1.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-108 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Subsections (2)(a)(I) and (2)(a)(II) as they existed prior to March 15, 2000, were renumbered on revision as (2)(a)(III) and (2)(a)(IV).

(3) Subsection (2.3)(b) provided for the repeal of subsection (2.3), effective January 1, 2007. (See L. 2001, p. 1111.)

ANNOTATION

Law reviews. For article, "Campaign Finance and 527 Organizations: Keeping Big Money in Politics", see 34 Colo. Law. 71 (July 2005).

Under subsection (1)(a), candidate committees must disclose all expenditures and obligations, even if no contributions are received. Thus, if a candidate runs without a separate committee and finances the campaign from personal funds, the candidate is a candidate committee and must disclose

expenditures and obligations as required by subsection (1)(a). Nothing in subsection (1)(a) indicates that expenditures must be reported only if drawn on outside contributions. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002).

Here, both candidate and the candidate committee made expenditures under the authority of the candidate. Thus, both the candidate and the committee were candidate committees or the candidate was acting through the formed committee. In either instance, the expenditures were subject to the disclosure requirements of subsection (1)(a). *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002).

Act is neither unconstitutionally vague nor unconstitutionally overbroad. As to candidate's vagueness argument, court finds that act provides sufficient notice to persons of ordinary intelligence that expenditures, regardless of the source of the funds, must be reported. As to candidate's arguments that act is unconstitutionally overbroad and inhibits basic first amendment freedoms, court finds that, construed to preserve its constitutionality, the act does not inhibit a candidate's expenditures of personal funds so long as those expenditures are made through a candidate committee and reported in accordance with this section. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. It is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

1-45-108.5. Political organizations - disclosure. (1) Any political organization shall report to the appropriate officer in accordance with the requirements of sections 1-45-108 and 1-45-109:

(a) Any contributions it receives, including the name and address of each person who has contributed twenty dollars or more to the political organization in the reporting period, and the occupation and employer of each natural person who has made a contribution of one hundred dollars or more to the political organization; and

(b) Any spending by the political organization that exceeds twenty dollars in any one reporting period.

(2) No political organization shall accept a contribution, or undertake spending, in currency or coin exceeding one hundred dollars.

(3) Nothing in this section shall be construed to:

(a) Require any political organization to make any additional disclosure pursuant to this section to the extent the political organization is already providing disclosure as a committee or political party in a manner that satisfies the requirements of sections 1-45-108 and 1-45-109; or

(b) Authorize the secretary of state to require disclosure of the name of any natural person that is a member of an entity unless the natural person has made a contribution to a political organization in the amount of twenty dollars or more in a reporting period.

Source: L. 2007: Entire section added, p. 1225, § 3, effective July 1.

Editor's note: Section 4 of chapter 289, Session Laws of Colorado 2007, provides that the act enacting this section applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2007, and for any election cycle or calendar year commencing after July 1, 2007, whichever is applicable.

1-45-109. Filing - where to file - timeliness. (1) For the purpose of meeting the filing and reporting requirements of this article, candidates for state wide office, the general assembly, district attorney, district court judge, or any office representing more than one county, except candidates for school district director; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications shall file with the secretary of state. Candidates in municipal elections, their candidate committees, any political committee in support of or in opposition to such candidate, an issue committee supporting or opposing a municipal ballot issue, and small donor committees making contributions to such candidates shall file with the municipal clerk. Candidates in special district elections, except candidates for director of the regional transportation district; the candidate committees of such candidates; political committees in support of or in opposition to such candidates; issue committees supporting or opposing a special district ballot issue; and small donor committees making contributions to such candidate shall file with the clerk and recorder of the county in which the district court having jurisdiction over the special district pursuant to section 32-1-303, C.R.S., is located. All other candidates, candidate committees, issue committees, political committees, and small donor committees shall file with the county clerk and recorder of the county of their residence. However, a report required to be filed with a county clerk and recorder shall be deemed properly filed if filed electronically pursuant to subsection (8) of this section.

(2) (a) Reports required to be filed by this article are timely if received by the appropriate officer not later than the close of business on the due date. Reports may be filed by fax and are timely if received by the appropriate officer not later than the close of business on the due date only if an original of the report is received by the appropriate officer within seven days of the due date.

(b) A person upon whom a penalty has been imposed for failure to file a statement or other information required to be filed pursuant to section 5, 6, or 7 of article XXVIII of the state constitution or section 1-45-108, this section, or section 1-45-110 by the due date may appeal the penalty by filing a written appeal with the appropriate officer no later than thirty days after the date on which notification of the imposition of the penalty was mailed to the person's last-known address. Upon receipt of an appeal pursuant to this paragraph (b), the appropriate officer shall set aside or reduce the penalty upon a showing of good cause.

(3) In addition to any other reporting requirements of this article, every incumbent in public office and every candidate elected to public office is subject to the reporting requirements of section 24-6-203 C.R.S.

(4) (a) All reports required to be filed by this article are public records and shall be open to inspection by the public during regular business hours. A copy of the report shall be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection.

(b) Any report that is deemed to be incomplete by the appropriate officer shall be accepted on a conditional basis and the committee or party treasurer shall be notified by mail as to any deficiencies found. If an electronic mail address is on file with the secretary of state, the secretary of state may also provide such notification by electronic mail. The committee or party treasurer shall have seven business days from the date of mailing such notice to file an addendum that cures the deficiencies.

(5) (a) The secretary of state shall operate and maintain a website so as to allow any person who wishes to review reports filed with the secretary of state's office or with a county clerk and recorder pursuant to this article electronic read-only access to such reports free of charge.

(b) All reports required to be filed by this article that are electronically filed pursuant to subsection (6) of this section shall be made available immediately on the website.

(c) The website shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee.

(d) At the earliest practicable date, the secretary of state shall develop and implement improvements to the website's design and structure to improve the public's ability to navigate, search, browse, download, and analyze information. Such improvements shall include but need not be limited to:

(I) Enhanced searching and summary reporting, including additional search fields such as zip code, employer, and vendor, the ability to search across multiple committees and all filers, the ability to filter or limit searches, such as by election cycle or candidate, the inclusion of smart-search features such as "name sounds like" or "name contains", and numerical totaling of amounts shown on search results;

(II) Features that facilitate the ability to download raw data and search results in one or more common formats to enable offline sorting and analyzing;

(III) Detailed, technical instructions for users;

(IV) Information to help users determine the scope of candidates' and committees' reports and campaign data available online, including explanations of which types of reports are available, the period covered by the online data, and which specific reports can be viewed for each campaign committee; and

(V) Resources that give the public comparative context when viewing campaign finance data, such as compilations of the total amounts of money raised and spent by individual candidates, lists of total amounts raised and spent by all statewide and legislative candidates, and compilations of fundraising and spending across candidates and election cycles.

(e) The secretary of state may promulgate rules necessary for the implementation of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) (a) The secretary of state shall establish, operate, and maintain a system that enables electronic filing using the internet of the reports required by this article to be filed with the secretary of state's office or with a county clerk and recorder. The rules for use of the electronic filing system shall be promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(b) In addition to any other method of filing, any person required to file with the secretary of state's office or with a county clerk and recorder may use the electronic filing system described in paragraph (a) of this subsection (6) in order to meet the filing requirements of this article. Where a person uses such electronic filing system to meet the filing requirements of this article, the secretary of state shall acknowledge by electronic means the receipt of such filing.

(7) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(8) (a) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(b) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) Each county clerk and recorder shall use the electronic filing system described in subsection (6) of this section to transmit any report filed with the county clerk and recorder to the secretary of state.

(III) A county clerk and recorder shall transmit any report to be transmitted to the secretary of state pursuant to subparagraph (II) of this paragraph (b) as quickly as practicable. The county clerk and recorder shall convert any report that is not electronically filed into electronic format before transmitting the report to the secretary of state.

(c) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) Any person required to file reports with a county clerk and recorder pursuant to this article may meet the filing requirements by using the electronic filing system described in subsection (6) of this section.

(9) Subsections (1) and (8) of this section shall not be construed to require the secretary of state to review reports electronically filed by persons required to file reports with a county clerk and recorder pursuant to this article or to impose any enforcement duties upon the secretary of state beyond the duties specified in section 9 of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (4), (5), and (6) amended, p. 125, § 7, effective March 15. **L. 2001:** (1) amended and (7), (8), and (9) added, p. 808, § 2, effective August 8; (6)(b) amended, p. 1111, § 3, effective September 1. **L. 2002:** (1) and (4)(a) amended, p. 1640, § 34, effective June 7. **L. 2003:** (1) and (7)(b) amended, p. 2159, § 4, effective June 3. **L. 2005:** (9) amended, p. 760, § 7, effective June 1. **L. 2007:** (5), (6), (7), (8), and (9) amended, p. 1296, § 1, effective July 1; (2) amended, p. 1983, § 37, effective August 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-104 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Subsection (2) was contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Administrative law judge (ALJ) correctly dismissed appellants' agency appeal under § 10 (2)(b)(I) of article XXVIII of the state constitution for lack of subject matter jurisdiction. No question that appellants were required to file reports with secretary of state under subsection (1) of this section once appellant-candidate became a candidate for the general assembly. This does not mean, however, appellants acquired right to appeal penalty to secretary of state. Report at issue was filed not in connection with appellant-candidate's candidacy for the general assembly but solely in connection with position as a county commissioner. Thus, ALJ correctly determined

that, for purposes of report and penalty at issue, appellants were persons required to file appeal with county clerk and recorder, not with secretary of state. *Sullivan v. Bucknam*, 140 P.3d 330 (Colo. App. 2006).

Although appellants could have been required to file a report with the secretary of state in certain circumstances, those circumstances were not present in instant case. Appellants do not qualify as persons required to file with secretary of state under § 10 (2)(b)(I) of article XXVIII of the state constitution for purposes of underlying action merely because they could have been required to so file in other circumstances. *Sullivan v. Bucknam*, 140 P.3d 330 (Colo. App. 2006).

1-45-110. Candidate affidavit - disclosure statement. (1) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article; except that an individual who is a candidate in a special legislative election that filed a candidate affidavit for the preceding general election shall not be required to comply with the provisions of this section, and except that a candidate in a special district election shall file the candidate affidavit or, alternatively, a copy of the candidate's self-nomination and acceptance form or letter submitted in accordance with section 32-1-804.3, C.R.S., if such form or letter contains a statement that the candidate is familiar with the provisions of this article, no later than the date established for certification of the special district's ballot pursuant to section 1-5-203 (3) (a). A candidate in a municipal election may comply with this section by filing a candidate affidavit pursuant to section 31-10-302 (6), C.R.S., if such affidavit contains a statement that the candidate is familiar with the provisions of this article.

(2) (a) Except as provided in paragraph (b) of this subsection, each candidate for the general assembly, governor, lieutenant governor, attorney general, state treasurer, secretary of state, state board of education, regent of the University of Colorado, and district attorney shall file a statement disclosing the information required by section 24-6-202 (2) with the appropriate officer, on a form approved by the secretary of state, within ten days of filing the affidavit required by subsection (1) of this section.

(b) No candidate listed in paragraph (a) of this subsection shall be required to file another disclosure statement if the candidate had already filed such a statement less than ninety days prior to filing the affidavit required by subsection (1) of this section.

(3) Failure of any person to file the affidavit or disclosure statement required under this section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the appropriate officer has sent a notice to the person by certified

mail, return receipt requested, addressed to the person's residence address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of receipt of the notice.

(4) Any disclosure statement required by subsection (2) of this section shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(5) If a person is defeated as a candidate or withdraws from the candidacy, that person shall not be required to comply with the provisions of this section after the withdrawal or defeat.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 99:** (1) amended, p. 1392, § 16, effective June 4. **L. 2002:** (1) amended, p. 1641, § 35, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-105 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (1)(a.5) added and (1)(b) and (2) amended, p. 126, § 8, effective March 15; (2)(d) added, p. 1725, § 3, effective June 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-113 and 1-45-114 as said sections existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3597.

1-45-111.5. Duties of the secretary of state - enforcement. (1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

1. **Source: L. 2003:** Entire section added, p. 2160, § 6, effective June 3. **L. 2005:** (2) amended, p. 852, § 4, effective June

ANNOTATION

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule defining "member" for purposes of constitutional provisions governing small donor committees. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's authority to enact proposed rule. Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of article XXVIII. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal

of achieving transparency of political contributions. *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006).

Plaintiffs demonstrated reasonable probability of success on the merits in alleging that administrative rule promulgated by secretary of state violated their constitutional rights to freedom of association as applied to them. Secretary's immediate enforcement of administrative rule forcing labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns would have effectively prevented plaintiffs from exercising their first amendment rights in general election. Administrative rule was not narrowly tailored. Rationale justifying administrative rule was based upon speculation there would be dissenters, thereby impermissibly penalizing constitutional rights of the many for the speculative rights of the few. Accordingly, district court did not abuse its discretion by entering preliminary injunction against implementation of administrative rule. *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006)

1-45-112. Duties of municipal clerk and county clerk and recorder. (1) The municipal clerk and county clerk and recorder shall:

(a) Develop a filing and indexing system for their offices consistent with the purposes of this article;

(b) Keep a copy of any report or statement required to be filed by this article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one year after the candidate leaves office;

(c) Make reports and statements filed under this article available to the public for inspection and copying no later than the end of the next business day after the date of filing. No information copied from such reports and statements shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(d) Upon request by the secretary of state, transmit records and statements filed under this article to the secretary of state;

(e) Notify any person under their jurisdiction who has failed to fully comply with the provisions of this article and notify any person if a complaint has been filed with the secretary of state alleging a violation of this article;

(f) Report apparent violations of law to appropriate law enforcement authorities.

(2) The secretary of state shall reimburse the municipal clerk and the county clerk and recorder of each county at the rate of two dollars per candidate per election to help defray the cost of implementing this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-115 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-112.5. Immunity from liability for fine or penalty. (1) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be immune from any liability for a fine or penalty imposed pursuant to section 10 (1) of article XXVIII of the state constitution in any proceeding that is based on an act or omission of such volunteer if:

(a) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and

(b) The violation was not caused by willful and intentional misconduct by such volunteer.

(2) Subsection (1) of this section shall be administered in a manner that is consistent with section 1 of article XXVIII of the state constitution and with the legislative declaration set forth in section 1-45-102.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3.

1-45-113. Sanctions. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (6) added, p. 633, § 3, effective May 6; (6) added, p. 952, § 4, effective May 27. **L. 2000:** (1), (2), (3), and (4) amended, p. 127, § 9, effective March 15. **L. 2001:** (4) amended, p. 1110, § 1, effective September 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-121 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-114. Expenditures - political advertising - rates and charges. (1) No candidate shall pay to any radio or television station, newspaper, periodical, or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials, or services. Any such rate shall not be rebated, directly or indirectly.

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate as a contribution to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

(3) Nothing in this article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs, and agency fees if such adjustments are offered consistently to other advertisers.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** Entire section amended, p. 128, § 10, effective March 15. **L. 2003:** (2) amended, p. 2160, § 5, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-118 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-115. Encouraging withdrawal from campaign prohibited. No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-119 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-116. Home rule counties and municipalities. Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112 (2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2003:** Entire section amended, p. 2161, § 7, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-120(1) as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-117. State and political subdivisions - limitations on contributions. (1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has

policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the sanctions authorized in section 1-45-113 or any appropriate order or relief, including injunctive relief or a restraining order to enjoin the continuance of the violation.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2002:** (4) added, p. 280, § 1, effective August 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-116 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this

section.

The purpose of this section is to prohibit the state government and its officials from spending public funds to influence the outcome of campaigns for political

office or ballot issues. *Colo. Common Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), *aff'd*, 102 P.3d 999 (Colo. 2004).

This section must be strictly construed. It is an established principle that statutes regarding the use of public funds to influence the outcome of elections are strictly construed. *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004).

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

Although moneys collected by the political subdivision were not derived from state-imposed sales, use, property, or income taxes, those moneys may be spent by the political subdivision only for authorized public purposes. The general assembly has in essence declared that the expenditure of moneys in the fund for purposes prohibited by this section are not authorized expenditures for public purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section prohibits the use of "public moneys from any source," not the use of "public funds". The general assembly thus selected a phrase not previously construed in seeking to limit the expenditure of funds by various governmental entities for certain purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section tends to promote public confidence in government by prohibiting the use of moneys authorized for expenditure by political subdivisions for specified public purposes to advance the personal viewpoint of one group over another. A political

subdivision's use of moneys that were authorized for expenditure for the benefit of an insured to oppose the passage of an amendment proposed by an insured is the type of conduct the general assembly intended to prohibit

by the enactment of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

What is of "official concern" to school district board of education is to be determined by reference to the official powers and duties delegated by the general assembly in the school laws. *Mountain States Legal Found. v. Denver Sch. Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

A matter of official concern is one which at the very least involves questions which come before the officials for an official decision. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

Proposed constitutional amendment not of official concern. A proposed amendment to the state constitution on a general election ballot is not a matter of official concern. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

Not determined solely by board. The characterization of a campaign issue as being of "official concern" is not a judgment which can be made solely by the board of education; such an interpretation of this section would give unlimited discretion to the school board to use school funds and school facilities whenever it suited the personal preference of the majority of the members. *Mountain States Legal Found. v. Denver Sch. Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

This section allows an employee with policy-making responsibility to expend public funds up to the \$50 limit in expressing an opinion about a pending ballot issue. *Regents of the Univ. of Colo. v. Meyer*, 899 P.2d 316 (Colo. App. 1995).

Paid staff time is a contribution in kind for purposes of this section. Time spent by the state treasurer's staff during work hours on a non-volunteer basis preparing and disseminating press releases expressing the state treasurer's opposition to a statewide ballot issue therefore violated this section to the extent that the value of that time exceeded \$50. *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004).

State treasurer's press conference and press releases opposing a statewide ballot issue violated this section. The press releases were not balanced factual summaries of the ballot issue and were not resolutions because they were not formal expressions of a voting body. The state treasurer expended more than \$50 in preparing the press releases and was not permitted to expend more than that to take a position of advocacy. *Colo. Common Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), *aff'd*, 102 P.3d 999 (Colo. 2004).

Public school payroll deduction system for teachers' union dues, a portion of which was given by the union to a political action committee, did not constitute a "contribution in kind" because it did not support a specific "issue" or "candidate" that the political action committee supported or opposed during the time that the district made the payroll deductions. *Mountain States v. Secretary of State*, 946 P.2d 586 (Colo. App. 1997) (decided under law in effect prior to 1997 amendment).

Brochure mailed by metropolitan districts explaining proposed improvements violated this section. The brochure, when read in its entirety, did not present arguments for and against the issue. In fact, it took a position exclusively in favor of the issue, presented no contrary arguments, and expressly advocated the passage of the bond initiative that was titled only days after the mailing of the brochure. Thus, it urged voters to vote for the initiative. *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

Although brochure did not mention ballot initiative by name, administrative law judge appropriately concluded that the language of this section does not require that level of specificity. The section prohibits "the urging of electors to vote a certain way." *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

1-45-118. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

**COLORADO SECRETARY OF STATE
RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE**

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SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

1. Definitions

- 1.1 “Business Activities”. For the purposes of Article XXVIII, Section 3(4)(b)(I) and Rule 4.13 of these rules:
- a. “Business activities” means any commercial activity involving the sale or exchange of goods or services, whether or not for profit, and any activity conducted for the production of revenue, other than the solicitation of voluntary donations.
 - b. “Cannot engage in business activities,” means that the articles of incorporation and by-laws, either expressly or implicitly, prohibits the corporation from engaging in any business activities.
- 1.2 “Contribution in support of the candidacy” shall include all contributions given directly or indirectly for a specific public office, including those to a person who maintains a candidate committee after an election cycle, but who has not publicly announced an intention to seek election to public office in the next or any subsequent election cycle. [Article XXVIII, Section 2(2)]
- 1.3 “Contribution”.
- a. “Contribution” does not include an endorsement of a candidate or an issue by any person.
 - b. The exception stated in section 2(5)(b) of the State Constitution that “‘Contribution’ does not include services provided without compensation by individuals volunteering their time”, applies only to services provided solely on the basis of time (such as legal advice, bookkeeping, computer consulting and programming, web mastering, etc.). The exception may include time-based services volunteered by an individual as a member of any firm, association, or other business entity, including a corporation, if such individual receives no direct or indirect compensation for the time volunteered. If a tangible product is produced as a result of such services, “contribution” includes the reasonable value of the materials involved, unless such value is negligible.
- 1.4 “Corporation”, as used in Article XXVIII, shall have the same meaning as set forth in section 1-45-103(7), C.R.S.
- 1.5 “Foreign Corporation”, as used in Article XXVIII, Section 3(12)(c), means a corporation organized under the laws of another country. The term does not apply to a corporation organized under the laws of another state.
- 1.6 “Issue”, as used in Article XXVIII of the Colorado Constitution and Article 45 of Title 1, C.R.S., shall mean a “ballot issue” or “ballot question” as such terms are defined in section 1-1-104(2.3) and (2.7), C.R.S. For the purposes Article XXVIII, section 2(10) of the Colorado Constitution, a matter shall be considered an “issue” at the earliest of the following:
- a. It has had a title designated and fixed in accordance with law;

- b. It has been referred to the voters by a governing board or the general assembly;
 - c. In the case of a citizen referendum petition, it has been submitted for format approval in accordance with law;
 - d. A petition has been circulated and signed by at least one person; except that, where a matter becomes an “issue” upon such signing, a person or persons opposing such issue shall not be considered an “issue committee” until one such person knows or has reason to know of the circulation; or
 - e. A signed petition has been submitted to the appropriate election official in accordance with law.
- 1.7 “Issue committee”
- a. “Issue committee” does not include a married couple.
 - b. A person or group of persons is an issue committee only if it meets both of the conditions in Article XXVIII, Section 2(10)(a)(I) and 2(10)(a)(II).
- 1.8 “Person”.
- a. A “natural person” is a human being.
 - b. For the purpose of Article XXVIII, Section 7, “person” shall mean any natural person.
- 1.9 “Per year” means “per calendar year”.
- 1.10 “Political Committee” does not include a married couple.
- 1.11 “Public office” means any office voted for in this state at any election. “Public office” does not include the office of president or vice president of the United States, the office of senator or representative in the Congress of the United States, or any office in a political party.
- 1.12 “Publicly announced an intention to seek election to public office or retention of a judicial office” means that a person has made a statement signifying an interest in the office by means of a speech, advertisement, or other communication reported or appearing in public media or in any place accessible to the public. Such statement includes a stated intention to explore the possibility of seeking an office. The registration of a candidate committee shall also constitute a public announcement of an intention to seek election or retention. [Article XXVIII, Section 2 (2)]
- 1.13 A registered agent or a committee or party treasurer for the purposes of Title 1, Article 45, shall be an individual or candidate designated to receive mailings and to address concerns and/or questions regarding the candidate committee, the political committee, the small donor committee, the issue committee, or the political party. [1-45-108(3)(b) and 1-45-109(4)(b)]
- 1.14 “Signature”, for purposes of any report filed electronically with the secretary of state, means the committee’s identification number, and “signing”, means the electronic transmission of the committee’s identification number to the secretary of state with the report being filed.
- 1.15 A “member”, as used in Article XXVIII, Sections 2(5)(b), 2(8)(b)(IV), and 2(14)(a) only, is a person who:
- a. Pays membership dues; and

- b. At least annually gives the membership organization specific written permission to transfer dues to a political committee or small donor committee. [This paragraph b. expires effective May 10, 2007.]

2. Committee Registration

- 2.1 When a committee registration form is received by the appropriate filing officer, an identification number will be assigned and a letter of acknowledgement will be sent by the appropriate filing officer to the registered agent on file informing him/her of the identification number. The registered agent for any issue committee, political committee, small donor committee, or political party shall sign the committee's registration form and all disclosure reports. [1-45-108(3) through (6)]
- 2.2 A candidate may serve as the candidate committee's registered agent or appoint someone to be the registered agent. The candidate and the registered agent shall sign the candidate committee registration form, and only the registered agent or the candidate may sign the contribution and expenditure report. [1-45-108(3)(b)]
- 2.3 A registered agent resigning from a political committee, issue committee, small donor committee, or political party shall file a letter of resignation with the appropriate filing officer and the committee or party via certified mail. The letter of resignation to the appropriate filing officer shall include the certified mail receipt number sent to the committee or party and the contact information for the committee or party. In accordance with Rule 3.1, the committee or party shall file an amended committee registration form within five days of such change. [1-45-108(3)(b)]
- 2.4 The purpose or nature of interest of the committee or party shall be included. A candidate committee shall identify the specific elective office sought upon registration. A political committee or small donor committee shall identify the candidates being supported or opposed.
- 2.5 An issue committee may support or oppose more than one issue without having to open numerous campaign accounts and file numerous committee registration forms if the following conditions are met: the specific issues are included on the committee registration form at such time as an issue meets the provisions of Rule 1.6; no generic phraseology may be used once such an issue is known (i.e.: Support or oppose issues affecting the basic rights of cattle); and the registration form states whether the committee will be supporting or opposing said issues. [Article XXVIII, Section 2(10)(a)(I) and (2)(10)(a)(II)]
- 2.6 Issue committees shall not contribute to political parties, political committees or candidate committees. An issue committee shall not contribute to, or accept contributions from, other issue committees that do not support or oppose issues supported or opposed by the issue committee making the contribution. [Article XXVIII, Section 2(10)(b)]
- 2.7 Political committees shall not contribute to issue committees. In addition, political committees shall not contribute to, or accept contributions from, other political committees that do not support or oppose candidates supported or opposed by the political committee making the contribution. [Article XXVIII, Section 2(12)(a)]
- 2.8 A political committee that is subject to reporting pursuant to both section 1-45-108, C.R.S., and the "Federal Election Commission Act of 1971" may file with the appropriate officer a copy of the registration filed with the federal election commission and, insofar as such registration contains substantially the same information required by subsection (3) of section 1-45-108, C.R.S., the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of section 1-45-103, C.R.S. The political committee shall not be required to file disclosure reports if copies of the reports required to be filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended,

are filed with the appropriate officer or are electronically available in the office of the appropriate officer and if such reports include the information required by section 1-45-108, C.R.S.

- 2.9 A corporation or labor organization may establish both a political committee and a small donor committee. Each committee is subject to the individual contribution and expenditure limits for that committee. [Article XXVIII, Section 2(14)(b)]
- 2.10 In accordance with the procedures set out in the "State Administrative Procedure Act" (Article 4 of Title 24, Colorado Revised Statutes), the secretary of state may close an inactive committee after two years of non-reporting. A committee shall be deemed inactive for the purpose of this rule after such committee has failed to file any reports with the appropriate filing officer for two consecutive years. [Article XXVIII, Section 2(3), and C.R.S. 24-4-105]
 - 2.10.1 A county clerk and recorder or municipal clerk designated as a committee's appropriate filing officer pursuant to section 1-45-109, C.R.S., may request the secretary of state to close a committee pursuant to this Rule. Such request shall be submitted in writing and contain a statement from the county clerk and recorder or municipal clerk that no disclosure reports have been received for at least two years either manually or electronically from such committee, and any other information that is relevant.
- 2.11 The "appropriate filing officer" for a political committee whose purpose is to support school board candidates or an issue committee whose purpose is to support or oppose a ballot issue, question, or measure for a school district not wholly contained within a single county shall be the county clerk and recorder of the county where the school district administrative offices are located.

3. Responsibilities of Candidate Committees, Issue Committees, Political Committees, Small Donor Committees and Political Parties

- 3.1 Whenever any of the information disclosed on the committee registration form changes, the change must be reported within five days by filing an amended committee registration form with the appropriate filing officer. When filing an amendment to the committee registration form, a new form should be completed that includes any updated information. The form must be signed by the registered agent, and, if for a candidate committee, the candidate must also sign the form. [1-45-108(3)]
- 3.2 Any political committee that has registered with the Federal Election Commission, and filed a copy of the registration filed with the Federal Election Commission with the appropriate officer, may terminate its active status with the appropriate officer if the committee submits a letter of termination. A termination letter may be filed at any time.
- 3.3 A candidate committee that changes elective office sought shall terminate the existing candidate committee and register a new candidate committee not later than ten days after such change. If the new elective office is for a state candidate, then all contributions received shall be subject to contribution limits and restrictions set forth in Article XXVIII, Section 3 for the new office.
- 3.4 A committee may terminate if the following conditions are met: the candidate or committee no longer intends to receive contributions or make expenditures; a zero balance is achieved by having no cash on hand and no outstanding debts or obligations; and the candidate or committee files a termination statement of contributions and expenditures. A termination statement may be filed at any time. [Article XXVIII, Section 2(3) and 1-45-106]

- 3.5 A political committee may change status to a small donor committee without terminating the political committee if the political committee has never accepted contributions over the amount of \$50 per natural person per year.
- 3.6 Unexpended campaign contributions to a candidate committee may be contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in Article XXVIII, Section 3(3)(e), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made.
- 3.7 Unexpended campaign contributions to local candidate committees may not be contributed to a state candidate committee.
- 3.8 Multi-purpose issue committees – termination of status. In the case of an issue committee whose purposes are not limited to supporting or opposing ballot issues or ballot questions (a “multi-purpose issue committee”), such multi-purpose issue committee may terminate its status as an issue committee by filing a termination statement of contributions and expenditures with the appropriate filing officer. In accordance with Rule 3.4, a termination statement may be filed at any time if the following conditions are met:
- a. the multi-purpose issue committee no longer has a major purpose of supporting or opposing any ballot issue or ballot question and no longer intends to accept or make contributions or expenditures to support or oppose a ballot issue or ballot question; and
 - b. the committee's separate account maintained in accordance with Article XXVIII, section 3(9) has achieved a zero balance by having no cash on hand and no outstanding debts or obligations.
- 3.9 Contributions Where the Identity of the Contributor is Unknown.
- a. Contributions received by a candidate committee, political committee, political party committee, or small donor committee, of any amount, where the identity of the contributor is unknown, shall not be retained. Such contributions must, within thirty (30) days, be donated to any charitable organization recognized by the Internal Revenue Service, or transmitted to the State Treasurer for deposit into the unclaimed property fund or such other fund as the State Treasurer may direct.
 - b. Contributions received by an issue committee in excess of twenty dollars (\$20) where the identity of the contributor is unknown, shall not be retained. Such contributions must, within thirty (30) days, be donated to any charitable organization recognized by the Internal Revenue Service, or transmitted to the State Treasurer for deposit into the unclaimed property fund or such other fund as the State Treasurer may direct.
- 3.10 Disposition of debt in anticipation of committee termination
- a. Notwithstanding any negative balance for a prior election cycle, all contributions received by a candidate committee in the current election cycle shall be subject to the limits on contributions set forth in section 3 of Article XXVIII of the Colorado Constitution and shall be reported accordingly.
 - b. Any financial obligations incurred by a candidate committee in an election cycle that are not paid within a commercially reasonable period of time, not to exceed six (6) months after the close of that election cycle, shall be treated as “contributions” from the service provider or vendor extending credit.

- c. In accordance with Article XXVIII, section 10(1) of the Colorado Constitution, where the treatment of such financial obligations as “contributions” results in a violation of any limit on contributions, a candidate shall be personally liable for any penalties imposed upon the committee.
- d. Any service provider or vendor extending credit who has made a commercially reasonable attempt to collect such debt shall not be considered to have made a “contribution.” An attempt to collect such debt shall be considered commercially reasonable if the service provider or vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances.

4. Disclosure – Contributions and Expenditures

- 4.1 All committees must keep a record of all contributions. All contributions received of \$20 or more during a reporting period shall be listed individually on the contribution and expenditure report. All other receipts and contributions under \$20 may be reported in total as non-itemized contributions for the reporting period. [1-45-108(1)]
- 4.2 When filing an amended report of contributions and expenditures, a new form shall be completed that includes the cover page of the report of contributions and expenditures, the detailed summary page, and any updated schedules listing only the amended information. [C.R.S. 1-45-109(4)(b)]
- 4.3 Contributions – when counted.
 - a. A contribution is considered made or received as of the date that it is accepted by the committee or party. In the case of a contribution by check or credit card, the date accepted is the date that the contribution is deposited into the committee’s or party’s account.
 - b. However, for purposes of section 1-45-105.5, concerning contributions by lobbyists to certain state officers and candidates when legislation is under consideration, a contribution is considered made or promised when possession of the check is transferred to any person not under the control of the issuer.
- 4.4 All committees must keep a record of all expenditures. All expenditures made of \$20 or more during a reporting period shall be listed individually on the contribution and expenditure report. All other expenditures under \$20 during a reporting period may be reported in total as non-itemized expenditures. [1-45-108(1)]
- 4.5 Loans received by a committee or party
 - a. All loans received by a committee or party must be reported continuously until repaid. [Article XXVIII, Section 3(8)]
 - b. Notwithstanding Article XXVIII, Section 3(8), a candidate may make a loan to his or her candidate committee. Such loan shall be at no interest. In accordance with the definition of “contribution” in Article XXVIII, section 2(5), the amount of the loan is a contribution from the candidate to the committee, but the interest-free use of such loan by the committee is not a contribution to the committee.
 - c. Any repayment of a loan shall be considered a returned contribution, except that interest repaid for a loan made pursuant to Article XXVIII, Section 3(8) shall be reported as an expenditure by the candidate committee.

- d. A loan made by a candidate to the candidate's own committee may be forgiven by the candidate. The amount of unpaid debt forgiven by the candidate shall remain a contribution and shall not be considered a returned contribution.
 - e. Loans made from a financial institution to a candidate committee pursuant to Article XXVIII, Section 3(8) shall not be forgiven.
- 4.6 Contributions by candidate – voluntary spending limits - loans.
- a. Contributions to a candidate's own committee by a candidate who does not accept voluntary spending limits shall not be subject to the contribution limits of Article XXVIII, Section 3.
 - b. Contributions to a candidate's own committee by a candidate who does accept voluntary spending limits shall be counted toward the limit on political party contributions set forth in Article XXVIII, Section 3(3)(d), and Section 4(2).
 - c. Candidates who have accepted voluntary spending limits may make loans to his or her candidate committee whose aggregate total may exceed the allowable limit established in Article XXVIII, Section 3 and Section 4(2) so long as the unpaid balance of any loans does not exceed the allowable limit at any time.
- 4.7 Candidate committees may share expenditures for costs of brochures, offices, office equipment, etc. if each candidate committee pays for its proportionate cost of the expense. If one candidate committee pays the entire cost, the reimbursement by the other candidate committee(s) shall be made within thirty (30) days. Such reimbursement is not a "contribution" from one committee to the other; it shall be reported as an expenditure by the reimbursing committee and as a returned expenditure by the reimbursed committee. If sharing expenditures results in a price discount based on volume or quantity, such discount shall not be considered a "contribution".
- 4.8 Any contributions received in excess of contribution limits shall be returned to the contributor within thirty (30) days.
- 4.9 Disclosure of Occupation and Employer
- 4.9.1 The requirement to disclose the occupation and employer of a contributor in Article XXVIII, Section 7 of the Colorado Constitution and section 1-45-108, C.R.S., applies to any one-time contribution of \$100 or more, and not to aggregate contributions totaling \$100 or more.
 - 4.9.2 If occupation and employer information as required by Article XXVIII, Section 7 is not provided, and the committee is unable to gather the information within 30 days after receipt of the contribution, the contribution shall be returned to the contributor no later than the 31st day after receipt.
- 4.10 The following rules relate to Article XXVIII, Section 3(3)(e), concerning the counting and reporting of unexpended campaign contributions retained for use in a subsequent election cycle.
- a. A candidate committee shall not list such retained amounts expressly on disclosure reports as "contributions from a political party" or as contributions from any specific political party.
 - b. If the amount retained is less than the limit on contributions from a political party specified in Section 3(3)(d), then the total of all political party contributions to the candidate

committee during the subsequent election cycle shall not exceed the difference between the amount retained and the limit on political party contributions. At such time as the total amount of all political party contributions to the candidate committee during the subsequent election cycle equals or exceeds the difference between the retained amount and the limit on political party contributions, then any subsequent or additional contribution by a political party to the candidate committee during the subsequent election cycle shall constitute a violation of Section 3(3)(d).

- 4.11 For purposes of complying with the requirement of Article XXVIII, Section 5, that a notice of independent expenditure include “a detailed description of the use of such independent expenditure”, such notice is sufficient if it includes an identification of the payee of the expenditure, the medium used for the communication, the date or dates for broadcast, delivery, or publication of the communication, and either the complete written text or transcript of the communication produced by the expenditure or a summary of the major points contained within the communication.
- 4.12 Article XXVIII, Section 6(2), concerning the prohibition against funding by corporations and labor organizations for electioneering communications, shall not apply to any corporation that:
- a. Was formed for the purpose of promoting political ideas and cannot engage in business activities;
 - b. Has no shareholders with a claim on its assets or other income; and
 - c. Was not established by, and does not accept contributions from business corporations or labor organizations.
- 4.13 A candidate who does not accept contributions but who expends money for campaign purposes shall not be required to form a candidate committee, but shall file disclosure reports for the reporting periods during which expenditures are made, in accordance with sections 1-45-108 and 1-45-109.
- 4.14 Membership dues transferred to small donor committees and political committees
- a. Membership organizations transferring a portion of a member’s dues to a small donor committee or political committee shall provide the respective committee with the member’s name, address, amount of dues transferred, and the date of the dues transfer.
 - b. Each small donor committee and political committee shall keep records of all contributions received in the form of membership dues transferred by a membership organization to the committee. Such records shall include each contributing member’s name, address, and amount of the dues transferred. [C.R.S. 1-45-108(1)(a)(I)]
 - c. Each small donor committee and political committee shall itemize and report the name and address of each person who has contributed \$20 or more in a reporting period, including but not limited to contributions received in the form of membership dues transferred by a membership organization to the committee. [Article XXVIII, Section 2(14)(a); C.R.S. 1-45-108(1)(a)]
 - d. On each disclosure report, the candidate or registered agent of a candidate committee, political party committee, political committee, small donor committee, or issue committee shall certify and declare, under penalty of perjury, that to the best of his or her knowledge or belief all contributions received in a reporting period, including contributions received in the form of membership dues transferred by a membership organization, are from permissible sources. [Article XXVIII, Section 3.]

- 4.15 Multi-purpose issue committees. In the case of an issue committee whose purposes are not limited to supporting or opposing ballot issues or ballot questions (a “multi-purpose issue committee”):
- a. Such multi-purpose issue committee shall report only those contributions accepted, expenditures made, and obligations entered into for the purpose of supporting or opposing ballot issues or ballot questions. A multi-purpose issue committee shall not be required to report donations, membership dues, or any other receipts except to the extent they are designated or intended to be used for the purpose of supporting or opposing one or more ballot issues or ballot questions.
 - b. Contributions accepted for the purpose of supporting or opposing ballot issues or ballot questions shall be deposited in an account separate from other funds of the issue committee in accordance with Article XXVIII, Section 3(9). If the issue committee accepts contributions relating to more than one ballot issue or ballot question, such contributions may be deposited in a separate account for each ballot issue or ballot question.
 - c. If a multi-purpose issue committee receives general, non-earmarked donations, membership dues, or other payments, and later chooses to allocate some or all of such non-earmarked contributions to support or oppose a ballot issue or ballot question, then it must transfer the funds into a separate campaign account maintained in accordance with Article XXVIII, Section 3(9) and report the transfer as a contribution from the committee itself.
- 4.16 Until terminated in accordance with these rules, a committee shall file a disclosure report for every reporting period, even if the committee has no activity (expenditures or contributions) to report during the reporting period
- 4.17 The unexpended balance shall be reported as the ending balance throughout the election cycle. Unexpended balances from the final report filed thirty days after the applicable election shall be reported as the beginning balance in the next election cycle.
- 4.18 In accordance with Article XXVIII, section 3(9) of the Colorado Constitution, the requirement that committee funds be deposited into “a financial institution” shall not mean that all committee funds must be deposited into one single bank, credit union, or other commercial financial institution.
- 4.19 Investment of funds
- 4.19.1 A candidate committee, issue committee, political committee, small donor committee, or political party may invest the committee’s funds in any type of account or instrument of a government regulated financial institution.
 - 4.19.2 Any change in the balance of funds resulting solely from the accrual of interest or dividends to the account and/or the automatic deduction of periodic service fees is not a contribution or an expenditure and shall not be subject to contribution limits, but shall be disclosed as miscellaneous income or expense on any disclosure report for which the interest, dividend, or service fee was received or charged.
- 4.20 Political organizations. In the case of political organizations as defined in section 1-45-103(14.5), C.R.S.:
- 4.20.1 The political organization shall report any contributions accepted of twenty dollars (\$20) or more during a reporting period and funds expended of twenty dollars (\$20) or more during a reporting period for the purpose of “influencing or attempting to influence the

selection, nomination, election, or appointment of any individual to any state or local public office.”

- 4.20.2 Political organizations shall file according to the filing schedules set forth in section 1-45-108(2), C.R.S.
- a. For the purposes of this Rule, “off-election year” for a political organization shall mean every odd numbered year.
 - b. For the purposes of this Rule, “major election” shall mean an election held in November of an even numbered year.
- 4.20.3 Political organizations shall not be required to file disclosure reports for reporting periods when no contributions of twenty dollars (\$20) or more were received and spending was less than twenty dollars (\$20).
- 4.20.4 Political organizations shall file all applicable disclosure reports required by section 1-45-103(14.5), C.R.S., with the appropriate filing officer. For the purposes of this rule, the appropriate filing officer shall be the same for political organizations as for political committees as outlined in section 1-45-109, C.R.S.
[1-45-108.5]
- 4.21 Disclosure of contributions by Limited Liability Companies (LLCs). [1-45-103.7(5), (6), (7), and (8)]
- 4.21.1 The written affirmation provided by an LLC in accordance with section 1-45-103.7, C.R.S., shall include the names and addresses of the LLC’s members and describe how the contribution is to be attributed to the LLC’s members.
 - 4.21.2 The affirmation shall include the occupation and employer of any member to whom a contribution of one hundred dollars (\$100) or more is attributed.
 - 4.21.3 A committee that receives a permissible contribution from an LLC that is attributed to one or more of the LLC’s members shall report the contributor as the member or members to whom the contribution was attributed. The contributor shall not be reported as the LLC if the contribution is attributed to one or more of the LLC’s members.
 - 4.21.4 Any contributions received by a committee from an LLC that does not comply with the affirmation requirements set forth in section 1-45-103.7, C.R.S., and this Rule 4.21 shall be returned to the contributor within thirty (30) days.
- 4.22 In accordance with Article XXVIII, sections 2(8), 2(9), and 3(4)(a) of the Colorado Constitution, corporations or labor organizations shall not make expenditures, including independent expenditures, that expressly advocate the election or defeat of a candidate.
- 4.23 Redaction of Personal Sensitive Information from Disclosure Reports
- 4.23.1 Any person who believes their safety or the safety of an immediate family member may be in jeopardy as a result of information disclosed on any campaign finance report filed with the Secretary of State pursuant to Title 1, Article 45, C.R.S., may apply to the Secretary of State to redact sensitive personal information from the online versions of such report(s). The Secretary of State, upon a showing of good cause, may redact the minimum amount of sensitive information necessary to protect the safety of such person or his or her immediate family. If the Secretary of State redacts sensitive information

disclosed on a campaign finance report, the original unredacted report shall remain a public record pursuant to Title 24, Article 72, C.R.S.

4.23.2 Applications for redaction of sensitive information shall be submitted in writing and shall include the requestor's name, the identified entry(s) of concern, a justification for the application, and the committee to whom the contribution(s) was made or expenditure(s) received.

5. Filing Dates and Reporting Periods

- 5.1 Quarterly reporting periods close on the last day of the month. The report shall be filed on or before April 15th, July 15th, October 15th and January 15th - following each calendar quarter. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. [1-45-108(2)(a)]
- 5.2 Monthly reporting periods close five calendar days prior to the last day of the month. The report shall be filed on or before the first calendar day of the following month. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. When the filing deadline for a monthly report approximates the filing deadline for a biweekly report, no separate monthly report shall be filed, and the biweekly report shall serve as the monthly report. [1-45-108(2)(a) and (c)]
- 5.3 The reporting period for biweekly reports required by section 1-45-108(2)(a)(l)(B) and (D) closes on the Wednesday preceding the due date. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. [1-45-108(2)(a)]
- 5.4 The post-election reporting period closes on the last day of the calendar month in which the election was held. The report shall be filed on or before the 30th day following the election. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. [1-45-108(2)(a)]
- 5.5 Reports filed manually. All disclosure reports filed manually with the secretary of state pursuant to section 1-45-108 C.R.S., shall be filed using the provided form, or if the report is filed in another permitted format, it shall be type written and the font size shall be no less than 12 point.
- 5.6 Reports filed electronically.
 - a. Reports filed electronically are due on the same date as manually filed reports and are due no later than close of business pursuant to section 1-45-109(2), C.R.S. Close of business for the purpose of electronic filing shall mean 11:59 p.m.
 - c. If the electronic filing system is unavailable for filing for a total of more than one hour after 4:00 p.m. on the due date for filing a report, the secretary of state may extend the due date for an additional day for electronically filed reports. [1-45-108(2.3), 1-45-109(6)]
- 5.7 The reporting period for any quarterly, monthly, or biweekly report begins on the first day following the last day of the reporting period for the previous report filed with the secretary of state. [1-45-108(2)(c)]
- 5.8 Special district elections.
 - a. For reports relating to special district elections that are required to be filed with the county clerk and recorder, reports shall be required only on the 21st day prior to, and on the Friday prior to, and on the 30th day after the date of the regular election.

- b. Reports relating to special district elections that are required to be filed with the secretary of state shall be subject to quarterly, monthly, and biweekly reporting as provided in section 1-45-108(2)(a)(I) if the major elections for such special district occur on the date of the general election. If the major elections for such special district occur at any other time, then reports shall be required only on the 21st day prior to, on the Friday prior to, and on the 30th day after the date of the regular election.
- 5.9 The reporting period for any report that is required to be filed with the county clerk and recorder shall close five calendar days prior to the date that the report is due.
- 5.10 For purposes of section 1-45-108(2)(d), which exempts a candidate committee for a former officeholder or person not elected to office from reporting if there is no change in the balance of funds maintained by such committee and if certain other conditions are met, a change in the balance of funds resulting solely from the accrual of interest or dividends to the account and/or the automatic deduction of periodic service fees does not subject such candidate committee to the reporting requirements of section 1-45-108, C.R.S., except that such candidate committee shall file an annual report for each calendar year. State candidate committees shall file such report not later than January 15th of the following year, and county and municipal candidate committees shall file such report in accordance with section 1-45-108(2)(a)(II),, C.R.S. Candidate committees that choose this option must notify, in writing, the appropriate filing officer of their intent. [1-45-108(2)(c) and (2)(d)]
- 5.11 County political party organizations shall file required reports pursuant to section 1-45-108 (2)(a)(II) with the county clerk and recorder for their jurisdiction. State political party organizations shall file required reports pursuant to section 1-45-108 with the secretary of state.
- 5.12 Once a committee has declared its committee status as active or inactive in a particular year, the committee shall follow the appropriate filing schedule for the remainder of that calendar year, except that an inactive committee may change its status to active at any time.

6. Violations and Complaints

- 6.1 If the appropriate officer, as defined in Section 2(1) of Article XXVIII, discovers a possible violation of Article XXVIII or Title 1, Article 45, and no complaint alleging such violation has been filed with the secretary of state pursuant to Article XXVIII, Section 9(2)(a), then the appropriate officer shall:
 - a. Provide the person believed to have committed the violation with written notice of the facts or conduct that constitute the possible violation, and
 - b. Allow seven business days to correct the violation or to submit written statements explaining the reasons that support a conclusion that a violation was not committed.
- 6.2 If, within the time allotted pursuant to Rule 6.1, the person fails to correct the violation or to offer a satisfactory explanation, then the appropriate officer may file a complaint pursuant to Article XXVIII, Section 9(2)(a).
- 6.3 A written complaint filed with the secretary of state pursuant to Article XXVIII, Section 9(2) (a) shall include the following: the name, address, and signature of the complainant (if the complainant is represented by counsel, such counsel's name, address, and signature shall be included along with the name, address, and signature of the complainant); the name and address of each respondent alleged to have committed a violation; and the particulars of the violation. A complaint may be submitted by fax or electronic mail if a signed original is received by the secretary of state no later than five calendar days thereafter. If the complaint is complete, the secretary of state shall promptly transmit the complaint to the Division of Administrative Hearings

in the Department of Personnel and Administration for the consideration by an administrative law judge, which will notify the respondents of the filing of the complaint and which will issue all other appropriate notices to the parties. [Article XXVIII, Section 9(2)(a)]

6.4 Political organizations.

6.4.1 If any person believes that a political organization has violated the provisions of section 1-45-108.5, C.R.S., the person may file a written complaint with the Secretary of State.

- a. The complaint shall include the information required by, and shall be submitted in accordance with Rule 6.3.
- b. If the complaint is complete, the secretary of state shall promptly transmit the complaint to the Division of Administrative Hearings in the Department of Personnel and Administration for consideration by an administrative law judge in accordance with Rule 6.3.
- c. A political organization that has violated section 1-45-108.5, C.R.S. shall not be subject to fines, but shall be ordered to comply with the requirements of section 1-45-108.5, C.R.S.

7. **Applicability of Constitutional and Statutory Provisions to Local Offices and Home Rule Elections**

7.1 The requirements of Article XXVIII of the State Constitution and of Article 45 of Title 1, Colorado Revised Statutes, shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Title 1, Article 45.

7.2 The provisions of Section 3(4) of Article XXVIII of the State Constitution relating to contributions and expenditures of corporations and labor unions apply to elections to every state and local public office, except local public offices in home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Title 1, Article 45.

7.3 The provisions of section 1-45-105.5, relating to a prohibition on lobbyist contributions to members of the General Assembly during legislative sessions, apply to members of the General Assembly who are candidates for any state or local office, including any office in home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Title 1, Article 45.

7.4 A political party, as defined in Section 2(13) of Article XXVIII of the State Constitution, at the level of a home rule county or home rule municipality that has adopted a charter, ordinance, or resolution that addresses any of the matters covered by Article XXVIII or Title 1, Article 45, may establish a separate account that is used solely for contributions made to the party, and expenditures made by the party, for the purpose of supporting the party's county or municipal candidates for offices within the county or municipality. Contributions to and expenditures from such account shall not be included for purposes of any limitations or reporting contained in Article XXVIII or Title 1, Article 45.

8. **Candidate Affidavits from Special District Director Candidates**

8.1 The special district designated election official or, as applicable, the presiding officer or the secretary of the board of directors, under section 32-1-804.3(5), C.R.S., shall provide to the county clerk and recorder of the county in which the district court having jurisdiction over the

special district pursuant to section 32-1-303, C.R.S., is located, the self-nomination and acceptance forms and letters, and affidavits of intent to be a write-in candidate no later than the date established for certification of the special district's ballot pursuant to section 1-5-203(3)(a), C.R.S.

- 8.2 If a candidate for a special district office fails to file a candidate affidavit, or the filed self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in candidate does not contain the statement required by section 1-45-110(1), C.R.S., the county clerk and recorder shall mail the special district a copy of the notification to the candidate regarding pending disqualification sent pursuant to section 1-45-110(3).
- 8.3 The clerk and recorder's receipt of the self-nomination and acceptance form or letter or the affidavit of intent to be a write-in candidate shall be deemed to be filed by the candidate; provided, however, that nothing in this rule shall be deemed or construed to impose any duty on a designated election official, presiding officer, or secretary to file any document on behalf of any candidate or to relieve any candidate of any obligation to file any document required by the fair campaign practices act, article XXVIII, or other law.
- 8.4 If the special district candidate affidavit, the filed self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in candidate contains a statement substantially stating, "I shall not, in my campaign for this office, receive contributions or make expenditures exceeding twenty dollars (\$20) in the aggregate, however, if I do so, I shall thereafter file all disclosure reports required under the fair campaign practices act," then no filing of disclosure reports is required unless and until the twenty dollar (\$20) threshold has been met. [Article XXVIII, Section 2(2) and 1-45-108(1)]

9. Electioneering Communications

- 9.1 All entities must keep a record of all contributions received for electioneering communications. All contributions received, including non-monetary contributions, of two hundred and fifty dollars or more, during a reporting period shall be listed individually on the electioneering report. [Article XXVIII, Sec. 6(1)]
- 9.2 All entities must keep a record of all expenditures made for electioneering communications. All expenditures of one thousand dollars or more per calendar year including name, address and method of communication, shall be listed individually on the electioneering report. [Article XXVIII, Sec. 6(1)]
- 9.3 The name of the candidate(s) unambiguously referred to in the electioneering communication shall be included in the electioneering report. [Article XXVIII, Sec. 2(7)(I)]
- 9.4 Pursuant to the decisions of the Colorado Court of Appeals in the case of Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (2006), and of the United States Supreme Court in the case of FEC v. Wisconsin Right to Life, 127 S. Ct. 2652 (2007), a communication shall be deemed an electioneering communication only if it is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making this determination, (1) there can be no free-ranging intent-and-effect test; (2) there generally should be no discovery or inquiry into contextual factors; (3) discussion of issues cannot be banned merely because the issues might be relevant to an election; (4) in a debatable case, the tie is resolved in favor of not deeming a matter to be an electioneering communication.

10. Recall Elections for State Office

- 10.1 The election cycle for a recall election shall be from the date the recall petition is approved for circulation by the appropriate officer through thirty days following date of the recall election.

- 10.2 The reporting period for committees participating in the recall election shall close five calendar days prior to the date that the report is due.
- 10.3 The incumbent in a recall election is not a candidate for the successor election according to C.R.S. 1-12-117; therefore, the incumbent may open an issue committee to oppose the recall.
- 10.4 The aggregate contribution limits specified for a general election in section 3 of article XXVIII shall apply to the recall election with respect to each successor candidate.

11. Electronic Filing.

- 11.1 All disclosure reports filed with the secretary of state pursuant to Article XXVIII of the Colorado Constitution and Article 45 of Title 1 of the Colorado Revised Statutes shall be filed electronically. Reports required to be filed electronically with the secretary of state under this rule that are presented for manual filing shall not be accepted. This Rule shall not apply to personal financial disclosure reports required by section 1-45-110, C.R.S.,
- 11.2 In accordance with section 24-21-111, C.R.S., reports are not required to be filed electronically in any of the following circumstances:
 - 11.2.1 An individual report contains fewer than thirty (30) entries.
 - 11.2.2 The secretary of state has granted an exception to the electronic filing requirement after written application based on hardship or other good cause shown. All applications for an exception shall include a brief statement of the hardship or good cause for which the exception is sought. Applications must be received by the secretary of state at least fifteen (15) calendar days prior to the first applicable filing deadline in the election cycle, unless the exception is based on emergency circumstances arising after such deadline, in which case the nature of the emergency shall be described in the application. The filing of an application for exception based on emergency circumstances does not delay any reporting deadlines, however, if a penalty is imposed for failure to file a report on the date due, the penalty may be set aside or reduced in accordance with section 10(2) of Article XXVIII. The Secretary of State shall review and respond in writing to all applications for an exception within three (3) business days.
 - 11.2.3 The report is filed using the secretary of state's Electronic Data Interface (EDI) upon approval of the secretary of state.
- 11.3 For the purposes of this rule 11, "electronic filing" is defined as the filing of reports required by Article XXVIII of the Colorado Constitution and Article 45 of Title 1 of the Colorado Revised Statutes utilizing the internet system created by the secretary of state pursuant to section 1-45-109(6), C.R.S.
- 11.4 For the purposes of this rule 11, "entry" is defined as any contribution, expenditure, returned contribution, returned expenditure, loan, loan repayment, or in connection with a political organization, spending.

12. Inflationary Adjustments to Contribution and Voluntary Spending Limits

- 12.1 Calculation of adjustments.
 - 12.1.1 In accordance with sections 3(13) and 4(7) of Article XXVIII of the Colorado Constitution, limits on contributions set forth in section 2(14) and subsections (1), (2), (3), and (5) of section 3, and the voluntary limits on spending set forth in section 4(1), are adjusted in the first quarter of 2007 and shall be adjusted every four years thereafter, based on the

percentage change in the consumer price index for the Denver-Boulder-Greeley area, over the four year period immediately preceding the adjustment.

- 12.1.2 In determining the adjusted amount, the percentage change in the consumer price index is rounded to the nearest whole percentage point. In accordance with sections 3(13) and 4(7), Article XXVIII of the Colorado Constitution, the adjusted limits are rounded to the nearest, lowest twenty-five dollars (\$25).
- 12.2 There is no adjustment to the contribution limits on individual donations to small donor committees outlined in section 2(14), Article XXVIII of the Colorado Constitution.
- 12.3 The aggregate limits on contributions from any person for a primary or a general election, described in section 3(1), Article XXVIII of the Colorado Constitution, are adjusted as follows:
- a. Five hundred twenty-five dollars (\$525) to any one:
 - (I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;
 - (II) Secretary of state, state treasurer, or attorney general candidate committee.
 - b. There is no adjustment to the limits on contributions to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or any district attorney candidate committee.
- 12.4 The aggregate limits on contributions from a small donor committee for a primary or a general election, described in section 3(2), Article XXVIII of the Colorado Constitution, are adjusted as follows:
- a. Five thousand three hundred dollars (\$5,300) to any one:
 - (I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;
 - (II) Secretary of state, state treasurer, or attorney general candidate committee; and
 - b. Two thousand one hundred, twenty-five dollars (\$2,125) to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or any district attorney candidate committee.
- 12.5 The aggregate limits on contributions from any person to a political party, described in section 3(3)(a), Article XXVIII of the Colorado Constitution, are adjusted as follows:
- a. Three thousand one hundred seventy-five dollars (\$3,175) per year at the state, county, district, and local level combined; and
 - b. Of such, no more than two thousand six hundred fifty dollars (\$2,650) at the state level.
- 12.6 The aggregate limits on contributions from a small donor committee to a political party, described in section 3(3)(b), Article XXVIII of the Colorado Constitution, are adjusted as follows:
- a. Fifteen thousand nine hundred dollars (\$15,900) per year at the state, county, district, and local level combined; and

- b. Of such, no more than thirteen thousand two hundred fifty dollars (\$13,250) at the state level.
- 12.7 The aggregate limits on pro-rata contributions or dues made to political committees, described in section 3(5), Article XXVIII of the Colorado Constitution, are adjusted to five hundred twenty-five dollars (\$525) per house of representatives election cycle.
- 12.8 The voluntary spending limits for a candidate described in section 4(1), Article XXVIII of the Colorado Constitution are adjusted as follows:
- a. The spending limit for governor, and governor and lieutenant governor as joint candidates under 1-1-104, C.R.S., or any successor section shall be adjusted to two million six hundred fifty thousand dollars (\$2,650,000).
 - b. The spending limit for a candidate for secretary of state, attorney general, or treasurer shall be adjusted to five hundred thirty thousand dollars (\$530,000).
 - c. The spending limit for a candidate for state senate shall be adjusted to ninety five thousand four hundred dollars (\$95,400).
 - d. The spending limit for a candidate for state house of representatives, state board of education, regent of the university of Colorado or district attorney shall be adjusted to sixty eight thousand, nine hundred dollars (\$68,900).

CONSTITUTION OF THE STATE OF COLORADO

ARTICLE X Revenue

Section 20. The Taxpayer's Bill of Rights.(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

- (a) "Ballot issue" means a non-recall petition or referred measure in an election.
- (b) "District" means the state or any local government, excluding enterprises.
- (c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.
- (d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.
- (e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.
- (f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.
- (g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions.

(a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: **"NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."** Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall begin, **"SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?"** or **"SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT**

COST OF (maximum total district cost), ...?"

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.

(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district

bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

ELECTION OFFICIAL'S GOVERNMENT CONTACT INFORMATION

DEPARTMENT OF LOCAL AFFAIRS (DOLA)

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COLORADO SECRETARY OF STATE (SOS)

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STATE OF COLORADO

DEPARTMENT OF LOCAL AFFAIRS

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Denver, CO 80203
Phone: (303) 866-2771
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Bill Ritter, Jr.
Governor

Susan E. Kirkpatrick
Executive Director

Department Contact Information

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Board of Assessment Appeals

1313 Sherman Street, Room 315
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Division of Emergency Management

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Division of Housing

1313 Sherman Street, Room 518
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Division of Local Government

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Division of Property Taxation

1313 Sherman Street, Room 419
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Office of Workforce Development

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Geographic Information Systems

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Demography

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Office of Smart Growth

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STATE OF COLORADO-ROSTER OF COUNTY CLERKS & RECORDERS

(01) ADAMS (12)	Karen Long ELECTION DIVISION	450 S. 4th Ave., Suite 200, BRIGHTON 80601-3195 FAX:(303) 920-7888 1865 W 121 Ave Suite 600, WESTMINSTER 80234	(303) 654-6020 (303) 654-6030 (303) 920-7850
(02) ALAMOSA (30)	Melanie Woodward ELECTION DIVISION	402 Edison Ave, ALAMOSA 81101-0630 FAX:(719) 589-6118 P.O. Box 630, ALAMOSA 81101-0630	(719) 589-6681
(03) ARAPAHOE (10)	Nancy Doty ELECTION DIVISION	5334 S. Prince Street, LITTLETON 80166-0211 FAX:(303) 794-4625	(303) 795-4200
(04) ARCHULETA (48)	June Madrid ELECTION DIVISION	449 San Juan, PAGOSA SPRINGS 81147-2589 FAX:(970) 264-8357 P.O. Box 2589, PAGOSA SPRINGS 81147-2589	(970) 264-8350
(05) BACA (22)	Sheila Emick ELECTION DIVISION	741 Main Street, SPRINGFIELD 81073-1548 FAX:(719) 523-4881	(719) 523-4372
(06) BENT (27)	Patti Nickell ELECTION DIVISION	725 Bent Ave., LAS ANIMAS 81054-1735 FAX:(719) 456-0375 P.O. Box 350, LAS ANIMAS 81054-0350 FAX: (719) 456-0375	(719) 456-2009
(07) BOULDER (07)	Hillary Hall ELECTION DIVISION	1750 33rd Street, Suite 200, BOULDER 80301-2546 FAX:(303) 413-7750 P.O. Box 471, BOULDER 80301	(303) 413-7740
(64) BROOMFIELD (64)	Russ Ragsdale ELECTION DIVISION	1 DesCombes Drive, BROOMFIELD 80020-2495 FAX:(303) 438-6228	(303) 464-5857
(08) CHAFFEE (31)	Joyce Reno ELECTION DIVISION	104 Crestone Ave., SALIDA 81201-1566 FAX:(719) 539-8588 P.O. Box 699, SALIDA 81202-0699	(719) 539-4004
(09) CHEYENNE (46)	Kay Feyh ELECTION DIVISION	51 S. 1st St., CHEYENNE WELLS 80810-0567 FAX:(719) 767-5540 P.O. Box 567, CHEYENNE WELLS 80810-0567 FAX: (719) 767-5540	(719) 767-5685
(10) CLEAR CREEK (51)	Pam Phipps ELECTION DIVISION	405 Argentine St., GEORGETOWN 80444-2000 FAX:(303) 679-2416 P.O. Box 2000, GEORGETOWN 80444-2000	(303) 679-2339 (303) 679-2441
(11) CONEJOS (25)	Lawrence Gallegos ELECTION DIVISION	6683 County Road 13, CONEJOS 81129-0127 FAX:(719) 376-5997 P.O. Box 127, CONEJOS 81129-0127 FAX: (719) 376-5997	(719) 376-5422
(12) COSTILLA (38)	Dolores Burns ELECTION DIVISION	416 Gasper St., SAN LUIS 81152-0308 FAX:(719) 672-3781 P.O. Box 308, SAN LUIS 81152-0308 FAX: (719) 672-3781	(719) 672-3301
(13) CROWLEY (36)	Lucile Nichols ELECTION DIVISION	631 Main Street, Suite 102, ORDWAY 81063 FAX:(719) 267-4608	(719) 267-4643
(14) CUSTER (52)	Debbie Livengood ELECTION DIVISION	205 S. 6th Street, WESTCLIFFE 81252-0150 FAX:(719) 783-2885 P.O. Box 150, WESTCLIFF 81252-0150	(719) 783-2441
(15) DELTA (18)	Ann Eddins ELECTION DIVISION	501 Palmer, Suite 211, DELTA 81416-1764 FAX:(970) 874-2161	(970) 874-2150

STATE OF COLORADO-ROSTER OF COUNTY CLERKS & RECORDERS

(16) DENVER (01)	Stephanie O'Malley/John Gaydeski ELECTION DIVISION	201 West Colfax, Dept. 101, DENVER 80202 FAX:(720) 913-8600 303 West Colfax, Dept. 101, DENVER 80204-2617	(720) 913-8683
(17) DOLORES (58)	LaRita Randolph ELECTION DIVISION	409 N. Main Street, DOVE CREEK 81324-0058 FAX:(970) 677-2815 P.O. Box 58, DOVE CREEK 81324-0058	(970) 677-2381
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www.ccionline.org/counties/sanjuan.html

59
**Summit County Assessor
P.O. Box 276
Breckenridge, CO 80424
Beverly Breakstone
(970)453-3480
(303)573-5887 (metro)
FAX (970)453-3481
beverlyb@co.summit.co.us
www.co.summit.co.us

60
Teller County Assessor
P.O. Box 1008
Cripple Creek, CO 80813
Tom King
(719)689-2941
FAX (719)689-0988
kingt@co.teller.co.us
www.co.teller.co.us

61
*Washington Cty Assessor
150 Ash St.
Akron, CO 80720
Larry Griese
(970)345-6662
FAX (970)345-2329
lgriese@co.washington.co.us
www.co.washington.co.us

62
Weld County Assessor
1400 N. 17th Avenue
Greeley, CO 80631
Chris Woodruff
(970)353-3845
720-652-4200 (metro)
FAX (970)304-6433
cwoodruff@co.weld.co.us
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63
*Yuma County Assessor
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Wray, CO 80758
Cindy Taylor
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FAX (970)332-3373
ycassessor@co.yuma.co.us
www.yumacounty.net

* Term limits eliminated

**Term limits extended to 3 terms

Counties that still have term limits – 15

Adams, Boulder, Costilla, Delta, Douglas, Eagle, Elbert, El Paso, Jefferson, Larimer, Mesa, Moffat, Montezuma, Teller, and Weld

Counties that extended term limits to 3 terms – 2

Arapahoe, Boulder, Larimer and Summit

Appointed Assessors – 2

Broomfield and Denver

First term assessors with term limits – elected 2002-2007 – 7 *

Adams, Costilla, Delta, Eagle, Larimer, Moffat, and Montezuma

Second term assessors with term limits – Elected in 1998 – 8

Boulder, Douglas, Elbert, El Paso, Jefferson, Mesa, Teller, Weld

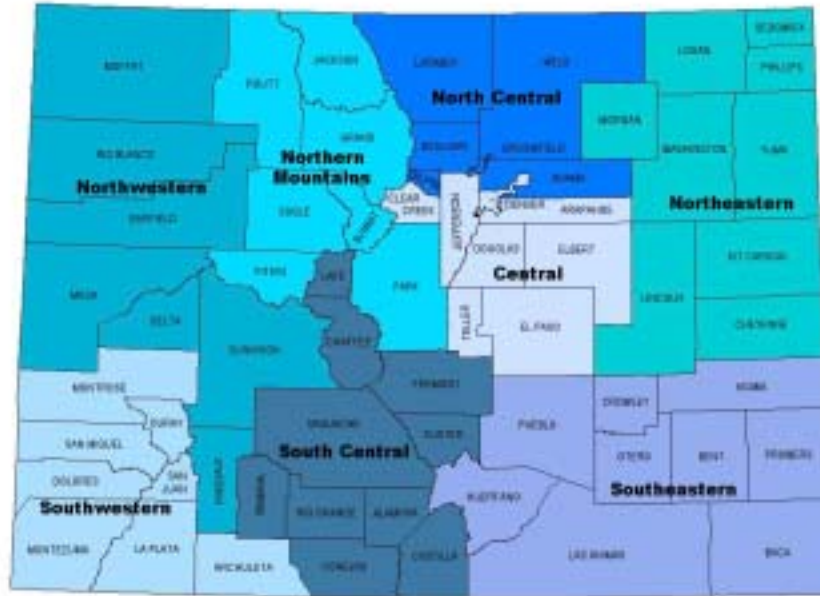
Third term assessors – Elected 1994, 1998, and 2002 ***

Arapahoe, Summit

Constitutional Term Limit Citation – 2 Consecutive Terms – Article XVIII, Sec. 11, Colorado Constitution

Elected Government Officials – “nonjudicial elected official” of local political subdivisions of *** the state, state board of education members, elected members of the governing board of a state institution of higher education

FIELD REPRESENTATIVES
COLORADO DEPARTMENT OF LOCAL AFFAIRS



The field representatives are extremely knowledgeable about the communities within their regions. The field representatives' day-to-day activities enable the department to have a thorough understanding of the unique needs, goals and accomplishments of Colorado's diverse communities. They help local governments and community agencies define issues, evaluate options, identify solutions and achieve results. They are often the first point of contact for a local government or community agency seeking assistance. They offer management, planning, community development and technical assistance, especially in the area of financial assistance through grant and loan programs available through the department.

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IMPORTANT NOTE:

Do not use this section of this document. Forms have been revised.
Please use forms available on the website:

http://dola.colorado.gov/dlg/ta/special_districts/elections/manual.html#manual

SAMPLE ELECTION FORMS & DOCUMENTS

THE DIVISION OF LOCAL GOVERNMENT CREATED AND COLLECTED THESE FORMS AND SAMPLE DOCUMENTS AS A CONVENIENCE TO SPECIAL DISTRICTS TO MEET THEIR STATUTORY ELECTION REQUIREMENTS. THESE FORMS WERE WRITTEN USING RELEVANT STATUTORY CITATIONS AND SECRETARY OF STATE RULES THAT GOVERN ELECTIONS AND CAMPAIGN AND POLITICAL FINANCE. MANY OF THE ELECTION DOCUMENTS AND SAMPLES ENCLOSED WERE CREATED, IN PART, WITH ASSISTANCE FROM OTHER SPECIAL DISTRICT GOVERNMENTS. SPECIAL DISTRICTS ARE NOT REQUIRED TO USE ALL OF THESE SPECIFIC FORMS. HOWEVER, A DISTRICT WISHING TO DEVELOP ITS OWN DOCUMENTS MAY WANT TO CONSULT WITH LEGAL COUNSEL FOR GUIDANCE. WATCH FOR UPDATES, REVISIONS, AND ADDITIONS BY VISITING THE ELECTIONS WEB PAGE AT <http://dola.colorado.gov/elections/>

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ELECTION BUDGET WORKSHEET

Name of Jurisdiction:	
Number of Registered Electors	
Number of Property Owners	
Number of Ballot Types	

SPECIAL DISTRICT ELECTION	2008 ESTIMATE	2008 ACTUAL	2006 ACTUAL	2008 INCREASE/ DECREASE
Personal Services: Salaries – Full Time Salaries – Part Time FICA Colo. Unemployment Insurance Worker's Comp Insurance Health Insurance Retirement Election Judges Other				
Total Personal Services				
Supplies: Office Supplies Legal Notices Computer Supplies Ballots for Elections Other				
Total Supplies				
Other Services & Charges: Mailing Printing Professional Services (Legal, etc.) Travel, Lodging & Meals Voting Equipment Rental Telephone Other				
Total Other Services & Charges				
TOTAL				

COLORADO – MAIL-IN BALLOT APPLICATION

Instructions: <ul style="list-style-type: none"> PRINT clearly using black ink READ the important information on the reverse side SIGN this form and return it to your County Clerk 	For County Clerk and Recorder Use Only
---	--

Last Name (Required)	First Name (Required)	Middle Name	Suffix (Jr., III)	Previous Name of Applicant (If Applicable)	
Colorado Legal Residence Street Address (Required – No P.O. Boxes)		Apt/Unit #	City/Town (Required)	Zip (Required)	County
Mailing Address or P.O. Box (Required if different from address above)		Apt/Unit #	City/Town (Required)	State (Required)	Zip (Required)
Date of Birth (Required) MM / DD / YYYY	Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	Telephone Number (Including Area Code) () -	Social Security Number (At Least the Last 4 Digits) - - - -		

If you are currently Unaffiliated and wish to vote in a Primary Election, you must declare an affiliation with a political party. Unaffiliated voters may affiliate with a political party up to, and including, Primary Election Day. If you are currently affiliated with a political party and wish to change your affiliation, you must submit this change request at least 29 days prior to Election Day.

<input type="checkbox"/> Democratic	<input type="checkbox"/> Republican	<input type="checkbox"/> American Constitution
<input type="checkbox"/> Green	<input type="checkbox"/> Gun Owner's Rights	<input type="checkbox"/> Libertarian
<input type="checkbox"/> Pro Life	<input type="checkbox"/> Reform	<input type="checkbox"/> Unaffiliated

PREVIOUS RESIDENCE: Complete this section only if you are registered to vote at a different legal residence address.

OLD Residential Street Address (No PO Boxes)	On what date did you, or will you, begin living at your new address?
City/Town	State Zip
	MM / DD / YYYY

PERMANENT MAIL-IN BALLOT LIST: Place a (✓) in the box to be added or removed from the list.

<input type="checkbox"/> Add my name to the list <input type="checkbox"/> Remove my name from the list	<p>Address to mail your Permanent Mail-In Election ballot(s) to - If different than your mailing or residential address</p> <p>Street Address _____ Apt/Unit # _____</p> <p>City/Town _____ State _____ Zip Code _____</p>
---	---

CURRENT YEAR MAIL-IN BALLOT LIST: Place a (✓) in the box to request a Mail-In Ballot for that election. Current Year Mail-In Ballot Applications must be resubmitted after January 1 for the elections held in *that* calendar year.

<input type="checkbox"/> August Primary Election – Only Held in Even-Numbered Years	<p>Address to mail your August Primary Election ballot(s) to - If different than your mailing or residential address</p> <p>Street Address _____ Apt/Unit # _____</p> <p>City/Town _____ State _____ Zip Code _____</p>
<input type="checkbox"/> November Election – Held Every Year	<p>Address to mail your November Election ballot(s) to - If different than your mailing or residential address</p> <p>Street Address _____ Apt/Unit # _____</p> <p>City/Town _____ State _____ Zip Code _____</p>

READ, SIGN AND DATE:

Under Colorado law, your Mail-In Ballot application must contain your printed name, signature, residence address, mailing address if you wish to receive the ballot by mail, and date of birth. If you do not provide all of this information, you may not receive a Mail-In Ballot according to the rules established by the Secretary of State. C.R.S. 1-8-104

<h2 style="margin: 0;">Signature or Mark (Required)</h2>	<p style="text-align: center;">Witness Signature (Optional)</p> <p style="text-align: center;">The Mail-In Ballot Application must be personally signed by the applicant; or, in case of the applicant's inability to sign, the applicant's mark must be witnessed by another person.</p>
<p style="font-size: 2em; font-weight: bold; margin: 0;">X</p> <p>Signature (Required) _____ Date (Required) _____</p> <p style="text-align: center;"><input type="checkbox"/> Yes, I want to be an Election Judge (Optional)</p>	<p style="font-size: 2em; font-weight: bold; margin: 0;">X</p> <p>Witness Signature (Optional) _____ Date _____</p>

COLORADO – IMPORTANT MAIL-IN BALLOT AND ELECTION INFORMATION

Your County Clerk's information is available on the Secretary of State's website at <http://www.sos.state.co.us>

Mail-In Ballot Application Deadlines and Replacement Instructions

- The Change of Residence section should be used only if you have moved within your county and will have lived at the new residence address at least 30 days prior to the election for which you are requesting a Mail-In Ballot. If your residence address has changed from one Colorado county to another, you must register to vote with your new residence county prior to applying for a Mail-In Ballot.
- If you wish to have a Mail-In Ballot MAILED TO YOU, this application must be received by the County Clerk's Office by close of business on Tuesday, the seventh day proceeding Election Day. Mail-In Ballots may be obtained IN PERSON at the County Clerk's Office until close of business on the Friday proceeding Election Day.
- Mail-In Ballots will be mailed approximately 30 days prior to Election Day, or thereafter within 3 days of the county clerk receiving a request for a Mail-In Ballot.
- In the event your original Mail-In Ballot is not received, or it becomes "spoiled," you may request a Replacement Mail-In Ballot. Contact your County Clerk's Elections Office for additional information about obtaining a Replacement Mail-In Ballot.
- If you request a Mail-In Ballot and lose it, or for some reason are not able to vote it, you may vote during Early Voting (see below) or on Election Day. When you vote, you will be provided a Provisional Ballot, and you must affirm that you requested a Mail-In Ballot and did not and will not vote it.

First Time Voters Who Register by Mail to Vote in the State of Colorado

If you are a **first time voter and you registered by mail** to vote in the State of Colorado, you were required to submit with your application one of the following forms of identification. If you have not already done so, you must submit a copy of one of these forms of identification when you return your Mail-In Ballot Application. **DO NOT** include original documents with the application. Please submit a copy of one of the following forms of identification:

- A valid Colorado driver's license
- A valid identification card issued by the department of revenue
- A valid United States passport
- A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state
- A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States
- A valid United States military identification card with a photograph of the eligible elector
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector
- A valid Medicare or Medicaid card issued by the United States health care financing administration
- A certified copy of a birth certificate for the elector issued in the United States
- Certified documentation of naturalization
- A valid student identification card with a photograph issued by an institution of higher education in Colorado

Any form of identification that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.

Permanent Mail-In Ballot Information

After the County Clerk & Recorder receives your completed application or letter to receive a Permanent Mail-In Ballot, your name will be placed on a list to receive a Mail-In Ballot for each applicable election.

Once your name is placed on the list to receive a Permanent Mail-In Ballot, you will remain on the list until one of the following:

- You send a letter, or fill out this form and select the check box "Remove my name from the list." Send the letter or completed form to your County Clerk's Elections Office.
- Your Mail-In Ballot is returned to the County Clerk & Recorder as undeliverable.
- Your voter registration record is marked "Inactive."

How to Determine Election Dates

Election Dates are defined by Colorado Revised Statute. Use the following information to determine the exact date for future elections:

- Primary Election - Held on the second Tuesday of August in each even-numbered year.
- General Election - Held on the Tuesday succeeding the first Monday of November in each even-numbered year.
- Odd-Numbered Year Election – Held on the first Tuesday in November in odd-numbered years.

Early Voting Information

- Each County Clerk and Recorder shall provide one or more Early Voting polling place(s), each of which shall be accessible to persons with disabilities.
- Early Voting is available to any eligible elector during regular business hours for 10 days before a Primary Election and for 15 days before a November election conducted by the County Clerk and Recorder.
- Information regarding Early Voting availability, locations, and schedules may be obtained by visiting your county website or by contacting your County Clerk and Recorder's Office.

**This sample resolution has many of the potential possibilities of an election.
ADJUST THE DETAILS TO FIT THE PARTICULAR CIRCUMSTANCES OF THE ELECTION BEING HELD.**

ELECTION RESOLUTION

WHEREAS, the term of office of Directors _____, _____, _____, and _____ shall expire after their successors are elected at the **regular** Special District election to be held on May 6, 2008 and take office; and

WHEREAS, in accordance with the provisions of the Special District Act ("Act") and the Uniform Election Code of 1992 ("Code), the Election must be conducted to elect _____ Directors to serve for a term of **four** years; and _____ Directors to serve for a term of **two** years.

WHEREAS, Article X, Section 20 of the Colorado Constitution (TABOR) requires voter approval for incurring debt, the creation of any tax, and for spending certain moneys above limits established by TABOR; and

WHEREAS, TABOR requires the District to submit ballot issues (as defined in TABOR) to the District's electors on certain election dates at which ballot issues and spending questions may be submitted to the District's eligible electors pursuant to TABOR; and

WHEREAS, Article XVIII, Section 11 of the Colorado Constitution limits the number of terms of office a local elected official may serve unless the District's eligible electors modify or eliminate such limitation; and

WHEREAS, the District desires to ask the electorate to eliminate the term limits established by Article XVIII, Section 11 of the Colorado Constitution; and

WHEREAS, the interest of the District and the public interest and necessity demand and require: (1) the design, construction and acquisition of sanitary sewer, water, street and safety protection and park and recreation improvements in the District; (2) seeking eligible elector approval to keep and spend all revenues which the District receives notwithstanding the limits of TABOR or any other law; and (3) elimination of limits on directors' terms; and

WHEREAS, the Board desires to authorize the Election to be conducted as a mail ballot election (pursuant to Section 1-7.5.-101, et seq., C.R.S.) of the electors of the District. A plan for mail ballot election will be submitted for approval by the Colorado Secretary of State (the Secretary of State) and the District has given notice to the _____ County Assessor and the _____ County Clerk and Recorder for that such election is being held.

NOW, THEREFORE, be it resolved by the Board of Directors of the _____ District in _____ County, State of Colorado that:

1. The regular election of the eligible electors of District shall be held on May 6, 2008, between the hours of 7:00 A.M. and 7:00 P.M. pursuant to and in accordance with the Act, Code, and other applicable laws. At that time, _____ Directors will be elected to serve a **four**-year term and _____ Directors will be elected to serve a **two**-year term.

2. _____ shall be appointed as the Designated Election Official on behalf of District and is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and of the Act, Code, or other applicable laws. The Election shall be conducted in accordance with the Act, Code, and other applicable laws. Among other matters, the Designated Election Official shall appoint election judges as necessary, appoint the Board of Canvassers, arrange for the required notices of election (either by mail or publication) and printing of ballots, and direct that all other appropriate actions be accomplished. The appointed person shall be appointed by the board and swear or affirm an oath of office. This document will be submitted to the board as an official part of the election record. Exhibit A

3. The Board hereby certifies the questions in substantially the form set forth in Exhibit B.

4. One (1) walk-in voting place is established as set forth below:

Designated Election Official's Name
District Office
District Office Street Address & Suite Number
City, State, Zip Code
District Office Telephone Number
District Office Facsimile and Email
Office Hours: _____ AM to _____ PM, Monday through Friday

It is hereby determined that there is no public location available within the boundaries of the District for a walk-in voting place and that it is necessary to use a private location outside of the District's boundaries as designated above. The Secretary of State shall approve the walk-in voting place. The walk-in voting place shall also be the walk-in voting place for disabled electors, and is accessible for persons with disabilities as required by law. The walk-in voting place shall also be open to assist all other eligible electors.

5. Applications for mail-in ballots may be filed with the Designated Election Official at _____, not earlier than **January 1, 2008, nor later than 5:00 P.M. on May 2, 2008.**

6. Self Nomination and Acceptance petitions are available at the Designated Election Official's office located at the above address. All candidates must file a nomination petition with the Designated Election Official no later than _____ P.M. on **February 29, 2008.** A person who misses this deadline, but wishes to be a write-in candidate for office, shall file an affidavit of intent with the Designated Election Official no later than _____ P.M. on **March 3, 2008.**

7. If the only matter before the electors is the election of persons to office, and if at the close of business on **March 4, 2008,** there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent to be a write-in, the Designated Election Official shall cancel the Election and by Resolution declare the candidates elected. Notice of such cancellation shall be published and posted in accordance with the Code.

8. **Severability.** If any part or provision of this Resolution is adjudged to be unenforceable or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, it being the Board's intention that the various provisions hereof are severable.

9. **Repealer.** All acts, orders, and resolutions, or parts thereof, of the Board which are inconsistent or in conflict with this Resolution are hereby repealed to the extent only of such inconsistency or conflict.

10. **Effective Date.** The provisions of this Resolution shall take effect immediately.

ADOPTED AND APPROVED this _____ day of _____, 20 _____.

Secretary of Board

(SEAL)

ATTACH EXHIBIT A

Appointment and Oath of DEO (Form B-5)

ATTACH EXHIBIT B

BALLOT QUESTIONS

**NOTICE BY PUBLICATION
A CALL FOR NOMINATIONS**

CRS 1-1-104(34); 32-1-804.1; 32-1-804.3

TO WHOM IT MAY CONCERN, and, particularly, to the electors of the _____

_____ District of _____ County(ies),

State of Colorado.

NOTICE IS HEREBY GIVEN that an election will be held on the 6TH day of May, 2008, between the hours of 7:00 a.m. and 7:00 p.m. At that time, _____directors will be elected to serve 4-year terms and _____directors will be elected to serve 2-year* terms. If an eligible elector of the _____ district is interested in serving on the board of directors, a Self-Nomination and Acceptance form may be obtained from the district designated election official:

_____ (Designated Election Official)
_____ (DEO Address)
_____ (DEO Address)
_____ (DEO Telephone)

Days of Operation: _____ Hours of Operation: _____am to _____pm

A Self-Nomination and Acceptance form that is not sufficient may be amended once at any time prior to 3:00pm on Friday, February 29, 2008. The deadline to submit a Self-Nomination and Acceptance is **Friday, February 29, 2008**. Affidavit of Intent to be a Write-In Candidate forms must be submitted to the office of the designated election official by the close of business on Monday, March 3, 2008.

NOTICE IS FURTHER GIVEN, application for a mail-in ballot shall be filed with the designated election official no later than the close of business on **Friday, May 2, 2008**, except that, if the applicant wishes to receive the mail-in ballot by mail, the application shall be filed no later than the close of business on **Tuesday, April 29, 2008**.

_____ District Name

_____ Designated Election Official Signature

PROCEDURAL INSTRUCTIONS: For Regular Elections, the "Call for Nominations" is to be published not less than 75 days nor more than 90 days before election per C.R.S. 32-1-804.1. In addition, C.R.S. 1-1-104(34) defines 'publication' as *printing one time, in a newspaper of general circulation in the [special district] if there is such a newspaper, and if not, then in a newspaper in the county in which the [special district] is located.* As for the *two year term, you will run this term of office **only** if a previous vacancy on your board has been filled by appointment and the remaining, unexpired portion of term must be filled by election. 32-1-905(2)(a) "...[an appointee is] to serve until the next regular election, at which time, the vacancy shall be filled by election for any remaining unexpired portion of the term."

Attn: Title 32, Article 1 Special District Designated Election Officials

Campaign & Political Finance and You!

1. COUNTY CLERK & RECORDER'S CAMPAIGN FINANCE CONTACT DATA

Contact the appropriate county clerk and find out who your CPF Official contact is. Get their name, title, address, telephone, email, and fax number. Fill out the missing data on form B-8 CPF Memorandum and provide a copy to all Candidates for Director.

2. KNOW THE FORMS

Be familiar with the self-nomination and acceptance form (B-9) and affidavit of intent to be a write-in candidate (B-76) form so that you can check them immediately for missing data. Whenever possible, have all applicants correct errors on their filings, immediately, at your counter. If you receive one of these forms by mail and deem it insufficient, call the candidate immediately to remedy the situation. Remember, the deadline for filing the self-nomination form, even if in your possession but was deemed insufficient, still applies. Candidates must make edits to the document, and resubmit the form, prior to the filing deadline.

3. EDUCATE YOUR CANDIDATES

Inform your district candidates that all questions regarding campaign and political finance should be directed to the County Clerk and Recorder of the county in which the district court having jurisdiction over the special district pursuant to 32-1-303, CRS, is located.

-GIVE CANDIDATES A COPY OF THEIR SELF-NOMINATION FORM OR WRITE-IN AFFIDAVIT, AFTER THE FORM HAS BEEN DATED AND RECEIVED BY THE DEO. CANDIDATES NEED PROOF OF COMPLIANCY.

-GIVE CANDIDATES A COPY OF CPF MEMORANDUM FOR FUTURE REFERENCE. THIS MEMO HAS THE CONTACT DATA FOR THE COUNTY CLERK AND RECORDER WHICH CANDIDATES MAY NEED FOR CPF FILING REQUIREMENTS. (Form B-8)

4. CANDIDATES FILE WITH THE DEO

Pursuant to SOS Campaign Finance Rule 8.1 Candidates will file Self-Nomination and Acceptance and Affidavit of Intent to be a Write-In candidate forms with the special district's designated election official. That's YOU! Expect to receive filings as soon as the call for nominations is published in your local paper.

The last day you may receive a self-nomination and acceptance form is February 29, 2008. This is a statutory deadline and you may not accept any filings after this date. Affidavits of Intent to be a Write-In Candidate can be submitted one day only, March 3, 2008. This is also a statutory filing deadline and you may not accept any filings after the close of business on this date.

5. VALIDATE ELIGIBILITY OF THE CANDIDATES

As the DEO it is your responsibility to verify the information provided on the self-nomination and acceptance and the affidavit of intent to be a write-in candidate forms to assure candidates are eligible for the office they seek. To be eligible to serve on the board of directors, the applicant must be an eligible elector in the district for which they will serve (CRS 1-4-501 and CRS 32-1-806). Call your county clerk & recorder to verify voter registration and/or your county assessor to verify property ownership. Remember, property owners do not have to reside in the district to be eligible to vote. They must, however, be registered to vote in the State of Colorado. The clerk & recorder can provide DEO's access to the statewide voter registration data base to verify voter registrations outside of their county. Be certain to deem candidates sufficient before forwarding self-nomination and acceptance forms or write-in affidavits to the clerk & recorder.

6. DESIGNATED ELECTION OFFICIAL FILES WITH THE CLERK

Pursuant to SOS Campaign Finance Rule 8.1, the special district designated election official shall provide to the county clerk and recorder of the county in which the district court having jurisdiction over the special district is located, the self-nomination and acceptance forms and affidavits of intent to be a write-in candidate no later than the date established for certification of the special district's ballot pursuant to section 1-5-203(3)(A), no later than 60 days before the election, March 7, 2008. The clerk and recorder will accept faxed copies of these forms for CPF tracking purposes. As the DEO and election official of your district, you must maintain all original election records.

Congratulations Special District Designated Election Officials! You are now done with Campaign & Political Finance and can refer candidates to the appropriate clerk & recorder for further inquiries!

CAMPAIGN & POLITICAL FINANCE COMPLIANCE
M E M O R A N D U M

Date: _____

To: All _____ District Candidates

From: _____, Designated Election Official

Regarding: 2008 Regular Special District Election – Candidate’s Campaign and Political Finance Responsibilities

Pursuant to Secretary of State Campaign Finance Rules 8.1 the designated election official shall provide to the county clerk and recorder of the county in which the district court having jurisdiction over the special district is located, the self-nomination and acceptance forms and affidavits of intent to be a write-in candidate, no later than 60 days before the election (pursuant to CRS 1-5-203(3)). As required, the district will forward your petition for candidacy to the following person:

_____ Clerk & Recorder CPF Contact Person
_____ Telephone Number

You have signed and submitted a self-nomination and acceptance form or an affidavit of intent to be a write-in candidate, and in so doing swore or affirmed that you ***“are familiar with the provisions of the Colorado Fair Campaign Practices Act (FCPA) as required in CRS 1-45-110 and shall not, in my campaign for this office, receive contributions or make expenditures exceeding twenty dollars (\$20) in the aggregate, however, if I do so, I shall file all disclosure reports required under the Fair Campaign Practices Act. I understand that no filing of disclosure reports is required unless and until the twenty dollar (\$20) threshold has been met.”*** [Article XXVIII, Section 2(2), CRS 1-45-108(1), and Secretary of State Rules Concerning Campaign & Political Finance 8.4]

Campaign and Political Finance filings are coordinated with the clerk and recorder as mentioned above. The designated election official of the district has provided you with the contact data for this official. If you have any campaign and political finance questions you must contact the clerk & recorder for further assistance.

Please note that the clerk & recorder coordinates CPF filings for all levels of local, school, municipal, and county governments. Consequently, many of the clerks set up automatic courtesy notifications to go out to all candidates and committees. These notices will remind you of the CPF filing deadlines, reporting periods, and of the \$50.00 per day penalty should you fail to file, or if your filing is received late.

However, because you have already sworn that unless and until you have received a contribution toward your candidacy or make an expenditure of personal funds of more than \$20.00, in aggregate that you will not be required to file, these notices shall not apply to you. As long as you maintain this status, you may disregard the correspondence that arrives from the county clerk and recorder regarding CPF. If, however, your status changes, and you become required to disclose and file Campaign & Political Finance documents, please contact your campaign finance official (the county clerk & recorder), immediately. They will provide you with instructions on how to proceed.

REQUEST TO SOS FOR MAIL BALLOT PLAN EXTENSION
{To be printed on district letter head}

February 27, 2008

Ms Rose A Sanchez
Elections Division
Colorado Secretary of State
1700 Broadway Ste 270
Denver CO 80290

Re: _____ District's request for extension for mail ballot plan filing deadline

Pursuant to CRS 1-7.5-105 and Secretary of State Election Rule 12.3.2 special districts who intend to have a mail ballot election must submit a mail ballot plan to you no later than 65 days prior to the May 6, 2008 regular biennial election, which is February 29, 2008.

However, at the close of business on the 63rd day before the election, if there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent to be a write-in candidate, the designated election official shall cancel the election and declare the candidates elected. This deadline falls on March 4, 2008 which is only four days later than the mail ballot plan deadline.

As of the date of our request, it appears that our district will not have enough candidates to hold an election. Therefore, we are asking the Secretary of State to extend the mail ballot plan deadline until after the time we can determine the need to proceed with holding an election, which is after the close of business on March 4th.

Our district is aware that the Secretary of State has 25 days to either approve or disapprove the mail ballot plan to the district. If, after the close of business on March 4th, it is determined that our district must hold a mail ballot election we will submit the mail ballot plan as required, and no later than the close of business on March 5th.

We appreciate your consideration for an extension of time to meet the mail ballot plan submission deadline. Please contact me with your decision as soon as possible.

Sincerely,

{ Designated Election Official }
{ DEO Street Address }
{ DEO City, State, Zip }
{ DEO Email }
{ DEO Telephone }
{ DEO Email }

cc: _____ District Board of Directors

MAIL BALLOT PLAN SAMPLE

WRITTEN PLAN FOR THE CONDUCT OF A MAIL BALLOT ELECTION TO BE HELD DECEMBER 5, 2006 FOR THE SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT

- Name of person submitting Plan:** Timothy J. Flynn, Attorney on behalf of
Designated Election Official
c/o Collins Cockrel & Cole
390 Union Boulevard, Suite 400
Denver, Colorado 80228
- a. Date of the election:** December 5, 2006
- b. Type and name of jurisdiction involved in the election:**
Southwest Metropolitan Water and Sanitation District, which is a Title 32, Special District
- c. Description of the type of election to be conducted:**
Court ordered inclusion election for the submission of a ballot question. A copy of the Jefferson County District Court Order for Inclusion Election issued August 11, 2006 is filed herewith.
- d. Citation of the statute authorizing the election:**
Section 32-1-401(2)(d), C.R.S.; Title 32, Article 1, C.R.S.; and Title 1, Articles 1 through 13, C.R.S.
- e. Estimated number of eligible electors:**
There are approximately sixty (60) eligible electors.
- f. Name of the Designated Election Official who will be responsible for all aspects of the election:**
Patrick J. Fitzgerald, Southwest Metropolitan Water and Sanitation District, 8739 Coal Mine Avenue, Littleton, Colorado 80123.
- g. Indication of whether County Clerk and Recorder will assist in the election for the entity other than by providing a list of registered electors and other information required by statute:**
Inasmuch as the property sought to be included is located in Arapahoe County, the Arapahoe County Clerk and Recorder (“Clerk”) will provide a list of registered electors in accordance with Section 1-7.5-107(2), C.R.S.
- h. Total number of “places of deposit”. For security reasons, unmonitored freestanding places of deposit located outside will not be allowed:**
There will be one (1) place of deposit, which will be located at the office of Collins Cockrel & Cole, attorneys for the Southwest Metropolitan Water and Sanitation Metropolitan District, located at 390 Union Boulevard, Suite 400, Denver, Colorado. This office will also be used as a walk-in balloting place. Since the office is located outside of Arapahoe County and the District, a request to the Secretary of State to approve this location as a walk-in balloting place, in accordance with Rule 12.9.1 of the Election Rules of the Colorado Secretary of State, is attached to this Plan as Exhibit A. A notice will be posted at such location identifying it as the walk-in balloting place. This walk-in balloting place will be

open during normal business hours beginning 25 days prior to the election, and from 7:00 a.m. to 7:00 p.m. on Election Day.

i. Written timetable for the conduct of the election in accordance with the statute:

A written timetable is attached to this Plan as Exhibit B.

j. Indication of how postage will be handled for ballot packets returned as undeliverable (e.g. “return postage guaranteed”):

In accordance with Section 1-7.5-107(d)(I), C.R.S., if an elector does not receive the ballot packet transmitted to him/her, such elector must sign a sworn statement specifying the reason for requesting the ballot. No replacement ballot shall be counted until it has been determined that a sworn statement has been completed by the elector. In accordance with Section 1-7.5-107(3)(a), C.R.S., ballot packets will be marked “RETURN SERVICE REQUESTED.” A copy of a sample mail ballot packet envelope is attached to this Plan as Exhibit C.

k. Indication of procedures to be followed to ensure compliance with statutes and rules, including persons responsible for each stage:

Sharon Mau and Heather Engbrock, Election Judges, will prepare ballot packets for mailing. Sharon Mau will oversee all steps of ballot issuance. The ballots will be printed in-house. Through consultation with the postal representative, the mail ballot packet envelopes meet current postal standards.

Voted ballots received will be dated and timed by Sharon Mau or another Election Judge appointed by the Designated Election Official. The Election Judges will receive training prior to beginning their duties as an Election Judge. Each Election Judge will also take a self-affirming oath prior to beginning their duties.

The Election Judges will also be responsible for recording ballots received on the registration lists. Ballot envelopes will then be counted and the number recorded in the daily reconciliation journal and the sealed ballot envelopes will be placed in a locked ballot box, used solely for this election. The Election Judges will record the number on the ballot box seal, which will be retained as part of the official election documents. The ballot box seal will not be broken until the Election Judges are ready to count the ballots. Sharon Mau shall handle replacement ballots and absentee ballots.

Ballots will only be mailed to active status electors. Ballots will be available at the walk-in location beginning 25 days prior to the election for inactive status electors or electors requiring replacement ballots. An inactive status elector may request a ballot from the Designated Election Official either by mail or in person by completing a sworn statement. If an elector delivers the ballot to the walk-in location, it shall first be checked for signature, before the ballot is logged in on the registration list and daily reconciliation log. Then it shall be deposited into the locked ballot box.

Any elector who spoils a ballot may request a replacement ballot, one at a time, up to a total of three (3) ballots. The spoiled ballot does not need to be returned before a replacement ballot is issued. When a replacement ballot is issued, the envelope with the replacement ballot, the return envelope and the secrecy envelope will all be marked with the word “Replacement” to reflect that it is a replacement ballot. If a return envelope is submitted which contains a replacement ballot or an original ballot for which a replacement ballot was issued, it shall be set aside until 7:00 p.m. on Election Day, to ensure that no other ballots are received by such elector. The first ballot received from the elector shall be considered the official ballot of such elector.

If an elector delivers more than five (5) ballot packets to the walk-in location, the name of the elector will be noted and a letter to such elector will be mailed notifying him/her that (s)he has violated the Secretary of State's Rule 12.9.2. The Designated Election Official will accept such ballots as any other legitimately submitted ballot.

No replacement ballot shall be counted until it has been determined that the elector has completed a sworn statement. A sworn statement may be returned with the replacement ballot. In such case, an Election Judge shall indicate on the outside of the return envelope that a sworn statement must be returned with the voted ballot.

Sharon Mau and Heather Engbrock will serve as Receiving Judges. The Receiving Judges will receive the ballots from the locked ballot box. After verification of signatures, envelopes will be opened, and without unfolding the ballots, the ballot stub will be removed from the ballot. The ballots will then be placed into another locked ballot box. Once all ballots have been verified, the ballots will be removed from the locked ballot box and unfolded in preparation for hand counting. The verification and counting of the ballots may begin ten (10) days prior to the Election Day. Since there are very few electors, such return envelopes will not be opened and counted until the Election Day.

Any elector who has registered to vote by mail and who (a) has not previously voted in an election in the county; or (b) is reregistering to vote after moving from one county in this state to another, must submit with his or her mail ballot a copy of his or her identification. Upon such determination, the mail ballot packet for such elector will include special instructions for complying with this requirement. The outside of the return envelope will be marked to identify such envelope. If such elector returns the ballot without providing the required identification, such mail ballot shall be treated as a provisional ballot. The outside of the return envelope shall then be marked "provisional." Before the provisional ballot is counted, the Designated Election Official or Sharon Mau shall confirm the voter registration of such elector from the state-wide voter registration records.

The written timetable attached as Exhibit B, explains the basic processes for conduct of the election. The Designated Election Official and Sharon Mau, Paralegal for Collins Cockrel & Cole, will be responsible for ensuring compliance with statutes and rules.

1. Description of procedures to be used to ensure ballot security at all stages of the process:

1. The ballots will be mailed from and returned to one office at the address listed above. When ballot packets are prepared, the person responsible for metering the mail and the Designated Election Official or an assistant will independently verify the total number of completed mail ballot packets. While not in use or being processed, ballots will be placed in a locked ballot box. The ballot boxes will have seals affixed that will be recorded in a log and signed off on by the Election Judges. The ballot boxes will not be opened until the voted ballots are to be counted on Election Day.
2. Each day mail is received, the mail will be checked for (a) unopened ballot packets returned as undeliverable, and (b) completed ballots. Undeliverable ballot packets that are returned will not be re-mailed. The undeliverable ballot packets and each completed ballot will be date-stamped and placed in separate marked files. A returned undeliverable ballot may be handed over to the elector to whom the ballot was sent, provided that the elector appears in person and presents an acceptable form of identification, and confirms that his/her address has not changed. If the elector's address has changed, they shall complete a replacement ballot request form with the address change. Any such returned ballot packets will be placed in a locked fireproof safe and the completed ballots will be placed in a locked ballot box after the processing is complete.

3. When ballots are being handled in the office, neither the office nor the ballots will be left unattended. When the ballots are finished being handled, they will be placed in a locked fireproof file or locked ballot box, as appropriate. Keys to the locked fireproof file will be maintained by the Designated Election Official and/or Election Judges.
4. The Designated Election Official or an assistant shall perform a daily reconciliation of mail ballots to keep track of the number of ballots returned and the “outstanding” ballots. This reconciliation will be locked at the end of each business day to ensure that the daily reconciliation numbers are not altered.

m. Description of procedures to be used for signature verification:

The Receiving Judges will examine the return envelope and verify that the name and address of the elector are consistent with the information on the registration lists received from the County Clerk’s office. In particular, the Receiving Judges will confirm that the signature indicates substantially the same name as the person used when he or she registered to vote and is the same as that on the registration list.

In addition, the Receiving Judges will examine the affidavit of eligibility to vote on the return envelope and verify that it has been completed and signed or will verify that the elector is a property owner or the spouse of a property owner within the District by examining the property owners list received from the County Assessor’s office.

If the elector did not sign the affidavit of eligibility to vote on the return envelope, and if time permitting, the Designated Election Official or an assistant will attempt to contact the elector in order for such elector to appear at the walk-in balloting location to sign the affidavit. No incomplete ballot will be remailed to the elector.

n. Description of procedures to be used to ensure privacy by use of a secrecy sleeve or secrecy envelope so receiving judges cannot tell how the elector voted:

The District will use a secrecy sleeve with instructions to voters included in the mail ballot package. The instructions will direct the voter to fold the ballot in a manner that will conceal the voter's mark on the ballot prior to placing it into the secrecy sleeve, and prior to placing it into the return envelope. A copy of the secrecy sleeve text is attached to this Plan as Exhibit D. A copy of the return envelope sample is attached to this Plan as Exhibit E.

o. Description of procedures to be used to reconcile ballots issued, ballots received, defective ballots, and substitute ballots:

In addition to the procedures specified under Paragraph l. above, the Designated Election Official or an assistant will prepare a pollbook with the following columns of information:

1. Name and address of each eligible elector.
2. Date the mail ballot packets are mailed to the elector.
3. Date the ballot is received by the Designated Election Official, including the initial verification of the return envelope.
4. Comment columns with space to note if the ballot received was defective and the date a substitute ballot was issued.

Once the Designated Election Official or an assistant has completed the information in the pollbook, the pollbook will be given to the Election Judges for purposes of assuring there are no more ballots to be counted than were issued.

The Election Judges shall have a form to keep record of the number of original ballots issued and reason the ballots were issued, the number of original ballots returned, the number of undeliverable ballots, the number of defective ballots returned, the number of replacement ballots issued, the number of replacement ballots returned, the number of spoiled ballots, the number of unused ballots, the number of ballots not returned in time, the number of ballots not counted and a detailed reason why not counted.

p. A sample of the secrecy sleeve text to be used in the mail ballot election.

A sample of the secrecy sleeve text to be used in the mail ballot election is attached hereto as Exhibit D.

Submitted this 10th day of October, 2006.

By _____
Timothy J. Flynn, Attorney on behalf of
Designated Election Official

EXHIBIT A

**REQUEST FOR WALK-IN VOTING SITE APPROVAL
FOR OUT-OF-DISTRICT VOTING SITE**

1. Name of District: SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT

2. Type of Jurisdiction: Title 32, Special District

3. Statute Authorizing Ability to Hold Election: Title 32, Article 1, C.R.S.; and Title 1, Articles 1 through 13, C.R.S.

4. Name of Designated Election Official: Patrick J. Fitzgerald

5. Location of walk-in voting site: Collins Cockrel & Cole, 390 Union Boulevard, Suite 400, Denver, Colorado.

6. Describe in detail procedures to ensure security at the walk-in voting site (please include description of how security will be handled daily, the location of the ballot box, the security of the site, as well as the ballot box): When walk-in voting ballots are received in the office, the person bringing in the ballot will place the ballot in a locked ballot box. Neither the walk-in voting place nor the ballot box will be left unattended during the hours in which the walk-in voting place is open for voting. When handling of the ballot box is completed for the day, the ballot box will be placed in an office that will be locked for the day.

Please approve this request to establish a walk-in voting site outside the District. No adequate location is available within the District to use as a walk-in voting site. The office of the attorney for the District appears to be the most convenient and secure site available.

Submitted this 10th day of October, 2006.

By _____
Timothy J. Flynn, Attorney on behalf of
Designated Election Official

Approved by the office of the Secretary of State this ____ day of October, 2006.

By _____

EXHIBIT B
WRITTEN TIMETABLE

<u>DATE TO BE COMPLETED</u>	<u>ACTIVITY REQUIRED/RESPONSIBLE PERSON</u>
August 11, 2006	Jefferson County District Court orders the conduct of the mail ballot election, appoints Designated Election Official.
October 11, 2006	Last date to submit written mail ballot plan to Secretary of State (at least 55 days prior)/ Designated Election Official or assistant
October 26, 2006	Last date for approval of mail ballot plan by Secretary of State (15 days after submission)
October 26, 2006	Notice of election and request for voter registration and property owners' lists given to County Clerk and Assessor (40 days prior)/Designated Election Official or assistant
November 3, 2006	Lists of registered electors and property owners submitted to election official (30 days prior)/County Clerk and Assessor
November 6, 2006	Close of voter registration (up to 29 days prior)
November 10, 2006 to November 20, 2006	Ballots mailed (15-25 days prior)/ Designated Election Official or assistant
November 15, 2006	Publish Notice of Election to electorate (no later than 20 days before)/ Designated Election Official or assistant
November 15, 2006	Supplemental lists of registered electors and property owners submitted (20 days prior)/County Clerk and Assessor
November 25, 2006	Verification and counting of ballots may begin (at any time during the 10 days before)/Designated Election Official or assistant
December 5, 2006	Election Day

EXHIBIT C

COPY OF MAIL BALLOT PACKET ENVELOPE SAMPLE

This may not be your only ballot.
Other elections may be held by other political
subdivisions
by mail or by polling place.

(BACK OF MAIL-IN/MAIL BALLOT OUT-GOING ENVELOPE)

County Clerk Name
(name of county) County Clerk and Recorder
Address

INSERT
ELECTION
LOGO
HERE

NONPROFIT ORG
U.S. POSTAGE PAID
or other wording as
needed by the
county - will vary
depending on
county

RETURN SERVICE REQUESTED

Official Ballot Enclosed

mailing label or cut-out (cut-outs) as needed by vendor

EXHIBIT D

SAMPLE SECRECY SLEEVE TEXT

And

VOTER INSTRUCTION CARD

AM I REQUIRED TO PROVIDE ID?

[insert information that informs voter if he/she is subject to ID requirements here]

If you are required to provide ID as indicated above, place a photocopy of one of the following **ACCEPTABLE FORMS OF IDENTIFICATION** into the Official Return Envelope. **(Do not place the photocopied identification in the Secrecy Sleeve with your voted ballot.)**

- A valid Colorado driver's license
- A valid identification card issued by the department of revenue
- A valid United States passport
- A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state
- A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States
- A valid United States military identification card with a photograph of the eligible elector
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector
- A valid Medicare or Medicaid card issued by the United States health care financing administration
- A certified copy of a birth certificate for the elector issued in the United States
- Certified documentation of naturalization
- A valid student identification card with a photograph issued by an institution of higher education in Colorado

Any form of identification that shows the address of the eligible elector shall be considered identification only if the address is in the State of Colorado.

REPLACEMENT BALLOT INFORMATION

If you spoil, deface or lose your ballot, you may obtain a replacement ballot, one at a time, not to exceed three ballots in all. If you spoil or deface your ballot, you may contact the Elections Office to obtain instructions for requesting a replacement ballot by calling [insert phone number].

Replacement Ballots may be requested from the [insert county name] Elections Office during regular business hours, [insert business hours], or on Election Day from 7:00 a.m. to 7:00 p.m.

DESIGNATED DROP OFF SITE INFORMATION

[insert designated drop off site information here]

Secrecy Sleeve with Voter Instructions

[insert county name] [insert election type]

[insert election date]

RETURN POSTAGE REQUIRED

You may return your voted ballot by mail or you may hand deliver your ballot to a Designated Drop Off Site (see opposite side for Designated Drop Off Site locations and schedules). If you choose to return your voted ballot by mail, you must affix adequate postage.

BALLOT PACKET CONTENTS

This is your Official Mail Ballot Packet for the [insert election type]. This packet contains the following items:

- Official Ballot
- Secrecy Sleeve with Voter Instructions
- Official Return Envelope

INSTRUCTIONS

To ensure that your vote(s) are counted correctly, it is important that you follow all the voting instructions shown on your ballot.

After you have marked all your voting choices and finished voting:

1. Refold your ballot exactly as you received it.
2. Place your voted ballot in this Secrecy Sleeve.
3. Place this Secrecy Sleeve (with voted ballot) into the Official Return Envelope. Do not place more than one ballot into the Official Return Envelope.
4. Sign and date the **AFFIDAVIT OF VOTER** located on the backside of the Official Return Envelope; refer to the example below.

Only one voter's ballot is permitted in your Official Return Envelope. If more than one ballot is placed in your Official Return Envelope, none of the ballots will be counted.

If you are a first time voter who registered to vote in the State of Colorado by mail, you must enclose a photocopy of your identification in the Official Return Envelope. Failure to provide ID will result in your ballot being treated as a provisional ballot. Do not place your ID photocopy in the Secrecy Sleeve with your voted ballot. See **AM I REQUIRED TO PROVIDE ID?** section on the opposite side for more information.

To verify that your Mail Ballot was received by the Elections Office, please [call insert phone number or visit our website insert county website address].

By law, your signature is required on the AFFIDAVIT OF VOTER (located on the backside of the Official Return Envelope). If you do not sign the affidavit, your ballot will not be counted.

AFFIDAVIT OF VOTER

I state under penalty of perjury that I am an eligible elector; that my signature, name, and address are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992."

X George Washington
Voter's Signature - (Signature Required)

TODAY'S DATE July 4, 1776

* Witness _____

* In case of applicant's disability or inability to sign personally, his/her mark shall be witnessed by another.

DEADLINE FOR RETURNING VOTED BALLOTS

Ballots must be received by the [insert county name] Clerk & Recorder's Office by 7:00 p.m. on Election Day in order for your votes to be counted. Ballots received after 7:00 p.m. on Election Day will not be counted. **Postmarks do not count as received.**

VOTER INSTRUCTIONS

**[insert county name] [insert election type]
[insert election date]**

RETURN POSTAGE REQUIRED

You may return your voted ballot by mail or you may hand deliver your ballot to a Designated Drop Off Site (see reverse side for Designated Drop Off Site locations and schedules). If you choose to return your voted ballot by mail, you must affix adequate postage.

BALLOT PACKET CONTENTS

This is your Official Mail Ballot Packet for the [insert election type]. This packet contains the following items:

- Official Ballot
- Secrecy Sleeve
- Voter Instructions
- Official Return Envelope

INSTRUCTIONS

To ensure that your vote(s) are counted correctly, it is important that you follow all the voting instructions shown on your ballot.

After you have marked all your voting choices and finished voting:

1. Refold your ballot exactly as you received it.
2. Place your voted ballot in the Secrecy Sleeve.
3. Place the Secrecy Sleeve (with voted ballot) into the Official Return Envelope. Do not place more than one ballot into the Official Return Envelope.
4. Sign and date the **AFFIDAVIT OF VOTER** located on the backside of the Official Return Envelope; refer to the example below.

Only one voter's ballot is permitted in your Official Return Envelope. If more than one ballot is placed in your Official Return Envelope, none of the ballots will be counted.

If you are a first time voter who registered to vote in the State of Colorado by mail, you must enclose a photocopy of your identification in the Official Return Envelope. Failure to provide ID will result in your ballot being treated as a provisional ballot. Do not place your ID photocopy in the Secrecy Sleeve with your voted ballot. See **AM I REQUIRED TO PROVIDE ID?** section on the opposite side for more information.

To verify that your Mail Ballot was received by the Elections Office, please [call **insert county phone number** or visit our website **insert county website address**].

By law, your signature is required on the AFFIDAVIT OF VOTER (located on the backside of the Official Return Envelope). If you do not sign the affidavit; your ballot will not be counted. →

AFFIDAVIT OF VOTER

I state under penalty of perjury that I am an eligible elector; that my signature, name, and address are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992."

X George Washington
Voter's Signature – (Signature Required)

TODAY'S DATE July 4, 1776

* Witness _____

* In case of applicant's disability or inability to sign personally, his/her mark shall be witnessed by another person.

DEADLINE FOR RETURNING VOTED BALLOTS

Ballots must be received by the [insert county name] Clerk & Recorder's Office by 7:00 p.m. on Election Day in order for your vote(s) to be counted. Ballots received after 7:00 p.m. on Election Day will not be counted. **Postmarks do not count as received.**

B-22 (Side 1)

AM I REQUIRED TO PROVIDE ID?

[insert information that informs voter if he/she is subject to ID requirements here]

If you are required to provide ID as indicated above, place a photocopy of one of the following **ACCEPTABLE FORMS OF IDENTIFICATION** into the Official Return Envelope. **(Do not place the photocopied identification in the Secrecy Sleeve with your voted ballot.)**

- A valid Colorado driver's license
- A valid identification card issued by the department of revenue
- A valid United States passport
- A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state
- A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States
- A valid United States military identification card with a photograph of the eligible elector
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector
- A valid Medicare or Medicaid card issued by the United States health care financing administration
- A certified copy of a birth certificate for the elector issued in the United States
- Certified documentation of naturalization
- A valid student identification card with a photograph issued by an institution of higher education in Colorado

Any form of identification that shows the address of the eligible elector shall be considered identification only if the address is in the State of Colorado.

REPLACEMENT BALLOT INFORMATION

If you spoil, deface or lose your ballot, you may obtain a replacement ballot, one at a time, not to exceed three ballots in all. If you spoil or deface your ballot, you may contact the Elections Office to obtain instructions for requesting a replacement ballot by calling [insert phone number].

Replacement Ballots may be requested from the [insert county name] Elections Office during regular business hours, [insert business hours], or on Election Day from 7:00 a.m. to 7:00 p.m.

DESIGNATED DROP OFF SITE INFORMATION

[insert designated drop off site information here]

EXHIBIT D (2nd Option)

VOTER INSTRUCTIONS FOR

{Insert District Name}, Mail Ballot Election, May 6, 2008

ALL BALLOTS, BOTH POLLING PLACE AND MAIL-IN ARE COUNTED IN THE SAME MANNER (CRS 1-8-101(4)(a))

Your ballot will not be counted unless the self-affirmation on the return envelope is properly completed, including signature and date. The return envelope and ballot must be received, by the designated election official of the district, no later than 7:00pm on Election Day, which is May 6, 2008. Post mark dates are not sufficient. Please read the instructions below and sign and date the self affirmation on the official return envelope before marking your ballot. If mailing your ballot, you must affix adequate postage or USPS will not deliver your ballot.

1. **DO NOT REMOVE THE STUB FROM YOUR BALLOT.**
2. **AFTER REVIEWING BOTH SIDES OF THE BALLOT FOR CONTENT, MARK THE BALLOT CAREFULLY, USING BLACK INK.**
3. **IF MORE THAN THE ALLOWABLE NUMBER OF MARKS IS PLACED ON THE BALLOT FOR AN OFFICE, QUESTION, OR BALLOT ISSUE, THIS IS CONSIDERED AN OVERVOTE AND THAT CONTEST WILL NOT BE COUNTED. Example: "Vote for Not More Than Two" means vote for no more than two (2) candidates in that race.**
4. **FOLD THE VOTED BALLOT IN A MANNER THAT WILL CONCEAL YOUR VOTES AND ONLY THE STUB IS VISIBLE. PLACE VOTED BALLOT INSIDE THE SECRECY SLEEVE, THEN PLACE THE SECRECY SLEEVE IN THE RETURN ENVELOPE FOR MAILING OR DELIVERY TO DESIGNATED ELECTION OFFICIAL.**
5. **First Time Voters Who Registered By Mail:**

If you registered to vote for the first time in your county by mail, and did not provide identification with your registration application, a copy of one of the following forms of identification is required with your mail ballot or mail-in ballot. If you are in doubt, provide a copy of your ID or call your county clerk and recorder to ask about your ID compliancy requirements. Place copies of ID inside the return envelope, but **NOT** inside the secrecy sleeve with your voted ballot:

- A current and valid Colorado driver's license; or
- A valid identification card issued by the Department of Revenue in accordance with the requirements of Part 3 of Article 2 of Title 42, C.R.S.; or
- A valid U.S. passport; or
- A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state; or
- A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States; or
- A valid U.S. Military identification card with photograph of the eligible elector; or
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector (a cable bill, a telephone bill, documentation from a public institution of higher education in Colorado containing at least the name, date of birth, and legal residence address of the student elector, a paycheck from a government institution, or a Certificate of Degree of Indian or Alaskan Native Blood are sufficient forms of identification); or
- A valid Medicare or Medicaid card issued by the United States Health Care Financing Administration; or
- A certified copy of a U.S. birth certificate for the elector issued in the United States; or
- Certified documentation of naturalization.
- A valid student identification card with a photograph of the eligible elector issued by an institution of higher education in Colorado.

Any form of identification indicated above that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado. In addition, if you fail to provide ID when required, your ballot will be treated as a provisional ballot. Provisional ballots may be counted only after registration and ID compliancy is verified. 1-7.5-107(3.5)(d), C.R.S.

If you spoil, deface, or lose your ballot, you may obtain a replacement ballot, one at a time, not to exceed three ballots in total. You may contact your district's Designated Election Official, to obtain instructions for requesting a replacement ballot, by calling {insert office number here}.

Procedural Instructions for DEO: These instructions should be part of the mail ballot packet and can be printed directly onto the secrecy sleeve or printed and inserted separately. Form B-22 is another sample Secrecy Sleeve with instructions preprinted on them from the Secretary of State's website. As you can see, the SOS's data is more comprehensive.

EXHIBIT E

COPY OF RETURN ENVELOPE SAMPLE

From _____

INSERT
ELECTION
LOGO
HERE

AFFIX
ADEQUATE
POSTAGE OF

**IMPORTANT! FAILURE TO INCLUDE
YOUR SIGNATURE ON THE BACK
OF THIS ENVELOPE WILL
INVALIDATE YOUR BALLOT.**

**BALLOT MUST BE
RECEIVED BY 7:00 P.M.
ELECTION DAY**

OFFICIAL BALLOT ENCLOSED

DESIGNATED ELECTION OFFICIAL'S NAME
DISTRICT'S NAME
ADDRESS
CITY STATE ZIP

(FRONT OF MAIL-IN/MAIL BALLOT RETURN ENVELOPE)

For Election Office Use Only

AFFIDAVIT OF VOTER

I state under penalty of perjury that I am an eligible elector; that my signature, name, and address are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992".

X _____
Voter's Signature – (Signature Required)

TODAY'S DATE _____

*WITNESS _____

* In case of applicant's disability or inability to sign personally, his/her mark shall be witnessed by another person.

IMPORTANT INFORMATION:

1. This voted ballot **MUST** be received by the Clerk & Recorder's Office no later than 7:00 p.m. on Election Day to be counted. Postmarks **DO NOT** count as delivery or receipt ; the voted ballot **MUST BE IN THE CLERK'S OFFICE** by 7:00 p.m. on Election Day.
2. Failure to sign the AFFIDAVIT OF VOTER will invalidate your ballot.
3. Voting more than once in the same election is a crime.

POSTMASTER – DO NOT DELIVER TO THIS ADDRESS

(BACK OF MAIL BALLOT RETURN ENVELOPE)

**[SAMPLE BALLOT AND INSTRUCTIONS]
[DO NOT USE THIS FORM AS YOUR BALLOT]**

No. 001 (or M.I.V No. 001)

(ONE INCH STUB – Required for Mail Ballot Elections)

No. 001 (or M.I.V No. 001)

(ONE INCH DUPLICATE STUB – Required for Mail-In Ballots and Polling Place Elections)

**OFFICIAL BALLOT FOR THE _____
DISTRICT**

(Date of election)

(Facsimile of signature of the designated election official of the district.)

To vote, place cross mark (X) at the right of the name of each candidate and each ballot issue and ballot question.
For write-in candidate, print name on blank line.

1-5-407(2), C.R.S.

Vote for not more than _____ Director(s), Four-Year Term(s)
(List established by lot drawing.)

Candidate A _____

Candidate B _____

Candidate C _____

_____ *

Vote for not more than _____ Director(s), Two-Year Term(s)**
(List established by lot drawing.)

Candidate D _____

Ballot Issue/Ballot Question _____
(Enter text of ballot issue or question here.)

YES _____
NO _____

PROCEDURAL INSTRUCTIONS: *Only provide a blank line for write-in candidates if an affidavit to be a write-in candidate was submitted to the office of the DEO, by the deadline, and if it was deemed sufficient. 1-5-407(3), C.R.S. ** Use only when a vacancy has been filled by appointment and any remaining unexpired portion of term must be filled by election.

REQUEST FOR LIST FROM ASSESSOR FOR TABOR NOTICE MAILING (If Applicable)

Procedural Instructions: Procedural Instructions: To be put on district letterhead. Call in advance to let the assessor’s staff know what it is you are doing. Also, get a price for this list and the contact data of the assessor. Be certain to include check or money order with your request. Order *early* and ask to have the list ran on the same day you pick it up, so that the data is as current as possible for your TABOR notice mailing on April 4th. Request that the list be created and picked up on the same day, (no later than March 31st). This list does not require the assessor’s certification because you are sending out a notice that your district is holding a ballot issue election, not ballots. Remember, ordering early and arranging to pick this data up at least five days in advance, should give your staff enough time to compare these addresses to the list of eligible voters you will also request from the clerk. Once you have created your final mailing list, you’ll need time to create mailing labels and mail TABOR notices by the April 4th deadline.

March 7, 2008

_____ Assessor’s Name
_____ County Assessor
_____ Address 1
_____ Address 2

Dear _____ County Assessor:

The _____ District is holding an election on May 6, 2008. As part of the election, our district plans to submit a ballot issue to the electorate. Pursuant to CRS 1-7-906 and 1-7-907, as well as Article X, Section 20(3)(b) of the Colorado Constitution, we are required to mail a titled notice to “All Registered Voters” at each address of one or more active registered electors. This notice must be sent at least 30 days before a ballot issue election.

To enable our district to meet this statutory requirement, we will need the assistance of the county assessor’s office. Please provide our district with a complete list of property owners who will have owned taxable real and personal property, within the district, no later than April 7, 2008. Please sort the list by street addresses, put the data into excel format, and then burn it onto a CD-ROM.

This request is strictly for the TABOR mailing and, consequently, does not need to be certified by your department. Please prepare this request, **ON** March 31st, and call my office when the disc is ready for pick up at _____. My district wants the most current data possible. However, we need time to prepare the notices for mailing by April 4, 2008.

I have phoned your office in advance, and per your instructions, am including the required processing fee of _____ dollars.

The _____ District appreciates the assistance of the _____ Assessor in assuring the success of our election. If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

Designated Election Official’s Name
DEO’s Address
City, State, Zip
DEO’s Telephone
DEO’s Facsimile
DEO’s Email

cc: Board of Director’s for Budget/Accounting Costs – Copy of Receipt to Follow

REQUEST FOR LIST FROM CLERK & RECORDER FOR TABOR NOTICE MAILING (If Applicable)

Procedural Instructions: To be put on district letterhead. Call in advance to let the Clerk & Recorder's Election staff know what it is you are doing. Also, get a price for this list and the contact data of the Clerk & Recorder. Be certain to include check or money order with your request. Order *early* and ask to have the list ran on the same day you pick it up so that the data is as current as possible for your TABOR notice mailing on April 4th. Request that the list be created and picked up on the same day, no later than March 31st. This list does not require the clerk's certification. You are not mailing official ballots, only a notice of a ballot issue. Remember, ordering early and arranging to pick this data up 5 days in advance, will give your staff time to create mailing labels and to send TABOR notices by the April 4th deadline.

March 7, 2008

_____ Clerk & Recorder's Name
_____ County Clerk & Recorder
_____ Address 1
_____ Address 2

Dear _____ County Clerk and Recorder:

The _____ District is holding an election on May 6, 2008. As part of the election, our district plans to submit a ballot issue to the voters. Pursuant to CRS 1-7-906 and 1-7-907, as well as Article X, Section 20(3)(b) of the Colorado Constitution, we are required to mail a titled notice to "All Registered Voters" at each address of one or more active registered electors. This notice must be sent at least 30 days before a ballot issue election, no later than April 4, 2008.

To enable our district to meet this statutory requirement, we will need the assistance of the county clerk and recorder's office. Please provide our district with a list of electors who are currently "**ACTIVE**" and who will be eligible to vote within the district no later than April 7, 2008. In addition, please sort the list by street address, put it into excel format, and burn the data onto a disc.

This request is strictly for the TABOR mailing and, consequently, does not need to be certified by your department. Please prepare the CD-ROM **ON** March 31st, so that the data is as current as possible for our mailing, and then call my office when the disc is ready for pick up at _____.

I have phoned your office in advance, and per your instructions, am including the required processing fee of _____ dollars.

The _____ District appreciates the assistance of the _____ County Clerk and Recorder in assuring the success of our election. If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

Designated Election Official's Name
DEO's Address
City, State, Zip
DEO's Telephone
DEO's Facsimile
DEO's Email

cc: Board of Director's for Budget/Accounting Costs – Copy of Receipt to Follow

SAMPLE LETTER

**REQUEST FOR PROPERTY OWNER'S LISTS FROM ASSESSOR
TO BE USED AS PART OF THE TOTAL LIST OF ELIGIBLE ELECTORS (aka POLLBOOK)**

Procedural Instructions: To be put on district letterhead. Call to get a price for these lists and the contact data of the Assessor and include check or money order with request. Confirm with assessor that you will need to pick up the first list ON March 27, 2008 and the 2nd list ON April 7, 2008. Your staff will have to go to the Clerk & Recorder's office and verify that the property owners are also registered to vote in the State of Colorado. You'll need time to verify voter status, create mailing labels, and begin sending ballots April 7 – 29th for mail-in ballots, and April 11th - 21st if you are doing a mail ballot election. This data will be used for Ballot Packet Mailing and/or for voter registration verification at a Polling Place election. If your district has a large number of eligible property owners, you may want to order these lists in excel format on disc. Normally the certified lists are in paper format. Ask for details when you speak with the county assessor to be certain of their standards of practice. Each county has different procedures in how they process these list requests from special districts.

Date

_____ Assessor's Name
_____ County Assessor
_____ Address 1
_____ Address 2

Dear _____ County Assessor:

The _____ District is holding an election on May 6, 2008. To enable our district to meet statutory deadlines for sending mail-in and/or mail ballots to all eligible electors of the district, pursuant to CRS 1-7.5-107, the district will need the assistance of the county assessor's office. Furthermore, if our district is holding a polling place election, this data is imperative to the district in verifying voter eligibility on Election Day.

On March 27, 2008, 40 days before the election, our district would like to pick up a certified and complete list of all recorded owners of taxable real and personal property within the political subdivision, who became owners no later than 30 days before the election.

A supplemental list is required 30 days before the election, and because this falls on a Sunday, we request this list on April 7, 2008. The supplemental list shall contain the names and addresses of all recorded owners who have become owners no later than 30 days before the election and AFTER the initial list was created. Please make sure that the supplemental list is not an exact replica of the original list. The supplemental list should only contain names of those property owners who became eligible after the 1st list was created. It is our goal to assure no person votes twice in our district's election.

Please sort the lists alphabetically by property owner's name as we must merge this data into the voter registration lists and verify the information provided. As required by law, the original and supplemental lists must be certified by the assessor to the designated election official. Please call me when the lists are ready for pick up at _____.

I have phoned your office in advance, and per your instructions, am including the required processing fee of _____ dollars for both the original and supplemental lists (and CD ROM if applicable).

The _____ District appreciates the assistance of the _____ County Assessor in assuring the success of our election. If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

Designated Election Official's Name
DEO's Address
City, State, Zip
DEO's Telephone
DEO's Facsimile
DEO's Email

cc: Board of Director's for Budget/Accounting – Copy of Receipt to Follow

SAMPLE LETTER

**REQUEST FOR REGISTERED VOTER’S LIST FROM THE COUNTY CLERK & RECORDER
(TO BE USED AS PART OF THE TOTAL LIST OF ELIGIBLE ELECTORS (aka POLLBOOK))**

Procedural Instructions: To be put on district letterhead. Call to get a price for these lists and the contact data of the clerk & recorder. Be certain to include check or money order with request. Confirm with the clerk that you will need to pick up the first list ON March 27, 2008 and the 2nd (supplemental) list ON April 7, 2008. Your staff will have to make use of the clerk & recorder’s computer on both of these days so they can verify the voter registration status of the lists of property owners you will have received from the assessor’s office. You will need time to verify voter status, create mailing labels, and begin sending ballots April 7 – 29th for mail-in ballots, and April 11th - 21st if you are doing a mail ballot election. This data will be used for Ballot Packet Mailing and/or for voter registration verification at a Polling Place election. If your district has a large number of eligible electors, you may want to order these lists in excel format on disc. Normally the certified lists are provided in paper format. Ask for details when you speak with the county clerk to be certain of their standards of practice. Each county has different procedures.

Date (Do not order these lists until after March 4th. You won’t know if your district’s election will be canceled until then.)

_____ Clerk & Recorder’s Name
_____ County Clerk and Recorder
_____ Elections Department
_____ Address 1
_____ Address 2

Dear _____ County Clerk & Recorder:

The _____ District is holding an election on May 6, 2008. To enable our district to meet statutory deadlines for sending mail-in and mail ballots to all eligible electors of the district, pursuant to CRS 1-7.5-107, the district will need the assistance of the county clerk and recorder’s office. Furthermore, if our district is holding a polling place election, this data is imperative to the district in verifying voter eligibility on Election Day.

On March 27, 2008, 40 days before the election, we will need a certified list of all registered electors who are currently eligible to vote in our district. A supplemental list is needed on April 7, 2008, and shall contain the names and addresses of all registered electors who have become eligible to vote in our district no later than 30 days before the election and AFTER the initial list was created. The supplemental list should contain only the names of those registered electors who became eligible to vote *after* the 1st list was created. It is our goal to assure no person votes twice in our district’s election.

Please sort the lists alphabetically by registered elector’s name. To help our district verify eligibility, please also provide the elector’s registration date, gender, and birth date. Furthermore, because we will send mail ballots to only those electors listed as “ACTIVE” on your registration records, we ask that you also provide the elector’s status on the lists provided. Please do not suppress privacy voter data as these electors need ballots too. In addition, ID compliancy status will be required so we know which ballots to tag for identification. Our district will forward all copies of identification received, to your office, at the conclusion of our election. As required by law, the original and supplemental lists must be certified by the clerk and recorder to the designated election official. Please call my office when the list(s) are ready for pick up at _____.

Finally, although not required by statute, our district would like to honor the voters in our district who have applied with the clerk and recorder for permanent mail-in voter status. If the lists you create, for our district election, could also tell us who is a permanent mail-in voter, we will gladly send those voters a ballot by mail. Providing this information will keep our electors from having to request a mail-in ballot twice.

I have phoned your office in advance, and per your instructions, am including the required processing fee of _____ dollars for both the original and supplemental lists (and/or CD if applicable). The _____ District appreciates the assistance of the _____ County Clerk and Recorder in assuring the success of our election. If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

Designated Election Official’s Name
DEO’s Address
City, State, Zip
DEO’s Telephone
DEO’s Facsimile and Email

cc: Board of Director’s for Budget/Accounting – Copy of Receipt to Follow

**ACCEPTANCE OF APPOINTMENT AND
CERTIFICATION OF QUALIFICATION OF ELECTION JUDGE**

1-6-101, C.R.S.

This is to acknowledge acceptance of my appointment as an election judge and a member of the provisional ballot board, and to notify you that I will serve as such at the regular election to be conducted on Tuesday, May 6, 2008 within the

_____ District.

(name of district)

I, _____, hereby certify that:
(printed name of election judge)

- (a) I am an eligible elector who resides in the district, or who has been exempted from the residency requirement; and am willing to serve as an election judge;
- (b) I am physically and mentally able to perform the required tasks of an election judge;
- (c) I will attend a class of instruction concerning the tasks of an election judge;
- (d) I have never been convicted of election fraud, any other election offense, or fraud; and
- (e) I am not a candidate whose name appears on the ballot, nor a member of the immediate family, related by blood or marriage to the second degree, of a candidate whose name appears on the ballot.

I acknowledge that if I fail to file this acceptance form within seven (7) days after the Certification of Appointment and Acceptance forms were mailed or if I fail to attend a class of instruction prior to the election, the designated election official may determine that a vacancy has been created and appoint someone else to take my position.

PRINTED NAME: _____

SIGNATURE: _____

ADDRESS: _____

TELEPHONE: _____

DATE: _____

PROCEDURAL INSTRUCTIONS: DEO, have your polling place judges sign and return this form, within 7 days. Remember to keep a master list of all judges pursuant to CRS 1-6-108.

MASTER LIST OF ELECTION JUDGES FOR POLLING PLACE

Precinct#	Precinct Name	Precinct Address	Precinct Phone	Precinct Contact	Receiving Judge Name	Judge Address	Judge Phone	Judge Email	Date Acceptance Returned	Date of Instruction	Certificate of Appointment & Site Details Sent

Precinct#	Precinct Name	Precinct Address	Precinct Phone	Precinct Contact	Supply Judge Name	Judge Address	Judge Phone	Judge Email	Date Acceptance Returned	Date of Instruction	Certificate of Appointment & Site Details Sent

Procedural Instructions: The DEO shall keep a copy of this document and all evidence as part of the official election records for the district.

Procedural Instructions: To be printed on district letter head and mailed to all election judges prior to training. Give your judges enough notice to plan on attending the class. Keep a copy of this letter as evidence of statutory compliancy and as part of the district's 2008 election records.

April 18, 2008

Judge's Name
Judge's Address
Judge's Address

Dear Judge:

CERTIFICATE OF APPOINTMENT – 2008 SPECIAL DISTRICT BIENNIAL ELECTION

You are hereby notified that you have been appointed to serve at the polling place location indicated below, for the Regular Election to be held on Tuesday, May 6, 2008.

PRECINCT NUMBER: _____
POLLING PLACE: _____
ADDRESS: _____

PRECINCT PHONE: _____
JOB ASSIGNMENT: Receiving / Counting / Support / Supply Judge

Your willingness to participate in the administration of this election is greatly appreciated. **However, should you decide that you cannot serve during the 2008 Special District Biennial Election, please call us immediately at _____.**

NOTICE OF TRAINING – 2008 SPECIAL DISTRICT BIENNIAL ELECTION

In order to become familiar with your duties as an Election Judge, the _____ Special District requires all poll workers to attend a mandatory training class. Attendance is required even if you have had previous experience as a poll worker.

Your scheduled training class information is listed below. Training classes run approximately two hours. You will be compensated \$10.00 for this class. Please arrive **15 minutes** early in order to register and receive your Judges' Manual. **If you must reschedule your class, please call our office as soon as possible at _____.**

LOCATION NAME: _____
ADDRESS: _____
DIRECTIONS: _____
DATE: _____
TIME: _____

Thank you for your dedication in making the election process in _____ District successful.

Sincerely,

Designated Election Official Signature

OATH OF JUDGE OF ELECTION

1-6-114, C.R.S.

I, _____, do solemnly swear (or affirm) that I am a citizen of the United States and the State of Colorado; that I am an eligible elector of the _____ District and a registered elector of the State of Colorado; that I will perform the duties of judge according to law, and to the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same; that I will not try to ascertain how any elector voted, nor will I disclose how any elector voted if in the discharge of my duties as judge such knowledge shall come to me, unless called upon to disclose the same before some court of justice; that I have never been convicted of any election fraud, any other election offense or fraud, and that I will not disclose the result of the votes until the polls have closed and the results are formally announced by the designated election official.

(Signature of Election of Judge swearing or affirming)

(Date)

State of Colorado

County of _____

Subscribed and sworn to before me this _____ day of _____, 20 _____.

(Signature of Election Judge Administering Oath)

PROCEDURAL INSTRUCTIONS: the oath is administered before judge's or staff duties begin, specifically before handling of ballots. The oath can be administered by a judge, election official, or it can be self-administered.

SAMPLE TABOR NOTICE

TO ALL REGISTERED VOTERS

NOTICE OF ELECTION TO INCREASE TAXES
NOTICE OF ELECTION TO INCREASE DEBT
ON REFERRED MEASURES
ABC METRO DISTRICT
DENVER, COLORADO

Election Date:

Tuesday, November 7, 2006

Election Hours:

7:00 a.m. to 7:00 p.m.

Local Election Office Address and Telephone Number:

**1234 Five Street
Denver CO 80203
303-123-4567**

Ballot Title and Text:

ABC METRO DISTRICT BALLOT ISSUE 5A – TO INCREASE TAXES:

SHALL ABC METRO DISTRICT TAXES BE INCREASED \$50,000 ANNUALLY, COMMENCING IN 2007, OR BY SUCH GREATER OR LESSER ANNUAL AMOUNT AS MAY BE DERIVED FROM AN AD VALOREM MILL LEVY NOT IN EXCESS OF FIVE (5) MILLS ANNUALLY (PROVIDED THAT SUCH MAXIMUM MILL LEVY SHALL BE ADJUSTED UP OR DOWN TO ACCOUNT FOR CHANGES IN LAW OR THE METHOD BY WHICH ASSESSED VALUATION IS CALCULATED OCCURRING AFTER 2006, SO THAT TO THE EXTENT POSSIBLE, THE ACTUAL TAX REVENUES GENERATED BY THE MILL LEVY, AS ADJUSTED, ARE NEITHER DIMINISHED NOR ENHANCED AS A RESULT OF SUCH CHANGES), THE REVENUES THEREFROM TO BE USED FOR THE PURPOSE OF PAYING THE DISTRICT'S OPERATIONS, MAINTENANCE, AND OTHER EXPENSES; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE IN 2007 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR SECTION 29-1-301, COLORADO REVISED STATUTES?

ABC METRO DISTRICT BALLOT ISSUE 5B – TO INCREASE DEBT:

SHALL ABC METRO DISTRICT DEBT BE INCREASED \$8,000,000, WITH A REPAYMENT COST OF \$32,000,000; AND SHALL ABC METRODISTRICT TAXES BE INCREASED \$2,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, IMPROVING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A COMPLETE POTABLE AND NON-POTABLE WATER SUPPLY, STORAGE, TRANSMISSION, AND DISTRIBUTION SYSTEM, INCLUDING TRANSMISSION LINES, DISTRIBUTION MAINS AND LATERALS, IRRIGATION FACILITIES, AND STORAGE FACILITIES, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 8.00% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 3% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

ABC METRO DISTRICT BALLOT ISSUE 5C – TO RETAIN EXCESS REVENUES:

SHALL ABC METRO DISTRICT BE AUTHORIZED TO COLLECT, RETAIN, AND SPEND ANY AND ALL AMOUNTS ANNUALLY FROM ANY REVENUE SOURCES WHATSOEVER OTHER THAN PROPERTY TAXES, AND SHALL SUCH REVENUES BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

Total District Fiscal Year Spending:

2007 - (estimated)	\$1,100,000
2006 - (estimated)	\$ 600,000
2005 - (estimated-audit has not been completed)	\$ 285,000
2004 - (estimated-no audit completed, un-audited financial statements could not be verified)	\$ 250,000
2004 - (estimated-no audit completed, un-audited financial statements could not be verified)	\$ 250,000
Overall Percentage Change From 2003 to 2007:	440% increase
Overall Dollar Change From 2003 to 2007:	\$ 850,000

ABC METRO District Estimates of Maximum Dollar Amount of Tax Increase for First Full Fiscal Year of Proposed Tax Increase:

Estimated Maximum Dollar Amount of Tax Increase for Ballot Issue 5A:	\$ 50,000
Estimated Maximum Dollar Amount of Tax Increase for Ballot Issue 5B:	\$ 2,000,000

Estimated First Full Fiscal Year Spending without Proposed Tax Increases (assumes no other tax increases are approved): \$ 600,000

Information on Proposed District Bonded Debt – ABC METRO District Ballot Issue 5B:

Principal Amount of Proposed Bonds:	\$ 8,000,000
Maximum Annual District Repayment Cost of Proposed Bonds:	\$32,000,000
Total District Repayment Cost of Proposed Bonds:	\$32,000,000

Information on Current District Bonded Debt – ABC METRO District:

Principal Balance of Total Current District Bonded Debt:	\$ 545,000
Maximum Annual District Repayment Cost of Current Debt:	\$ 85,000
Total District Repayment Cost of Current Debt:	\$ 763,226

Summary of Written Comments For ABC METRO District Ballot Issue 5A:

1. ABC METRO District is a Colorado local government entity, just like other Water Districts, Library Districts, Fire Districts, School Districts, Metro Districts, Sanitation or Wastewater Districts. Statutory compliance to Colorado’s law that governs Special Districts (Title 32) is mandatory and requires diligence, knowledge, expertise, and attention to detail.
2. This tax assessment would allow the District to annually raise the money needed to pay for the government administration of the District as a Colorado local government Special District, currently assessed as a monthly ‘service’ fee of \$43.00 to every household.
3. If the mill levy passes, the \$43.00 monthly assessment would be removed from monthly bills. This amounts to \$516.00 per year that would be shifted to your annual taxes and can be used as an adjustment to income on annual taxes.
4. If the mill levy does not pass, the \$43.00 monthly assessment will remain on residents monthly bills and will be evaluated on an annual basis to determine whether it covers the costs of administratively operating the District as a Colorado local government.
5. If the mill levy passes and is assessed on residents’ annual tax statements, the county would collect the money from each resident, saving the District the cost of collecting this money on a monthly basis from each resident. The County would have to handle any delinquent or unpaid accounts for these funds as they are taxes.
6. The funds collected would be deposited in the General Fund of the District and could be used for allowable expenses within that account – the funds would not be used for debt service.

Summary of Written Comments Against ABC METRO District Ballot Issue 5A:

No comments were received by the Constitutional deadline.

Summary of Written Comments For ABC METRO District Ballot Issue 5B:

1. Issuing General Obligation bonds allows the District to raise funds to address necessary work on its water delivery infrastructure, while having repayment costs as part of annual taxes.
2. The BOD MUST address these problems – doing nothing is not an option.
3. If the Debt question fails, one option for the BOD is to fund the projects through monthly assessments. Cost estimates for projects in 2007 are over \$400,000.00. Residents’ monthly bills would increase about \$135.00/month. Cost estimates for projects in 2008 are over \$400,000.00, resulting in an additional \$135.00/month. This pattern would continue over the years until the \$6 million in projects identified in the Capital Improvement Plan were completed.
4. If the Debt Question fails, another option could be revenue bonds. However, the credit rating of the District is poor and IF the District could find an underwriter, the interest rate on the bond would be higher than the market average. IF a revenue bond was issued, residents would see the ‘debt service’ portion on their monthly bill increase to cover the repayment of the bond.
5. If the Debt Question passes, the first phase bond issuance would include paying off the balance of the District’s existing revenue bond (approx. \$550,000.00) and the balance of the DOLA loan (approx. \$7500.00). If these debts are paid off, the debt service fee of \$26.00/month would be removed from the bill. That is a ‘savings’ of \$312.00 a year which becomes an annual tax assessment.

6. If the Debt Question passes, the county would collect the money from each resident, saving the District the cost of collection. The County would handle any delinquent or unpaid accounts.
7. The bond funds are earmarked solely for the Capital Fund of the District and can only be used for capital expenditures. They cannot be transferred to any other account used for general operations of the District.
8. As projects are completed under the Capital Improvement Plan (CIP), which is a detailed analysis performed by a professional engineering/planning firm, maintenance and repairs would diminish, resulting in savings for the District.
9. Bond proceeds would be controlled through a third-party trustee (not the BOD or the District management) who would be responsible for ensuring that the funds are used for projects as outlined in the CIP within the required time limits.
10. Having authorization to issue \$8 million in bonds saves the District paying associated costs of bond counsel, bond underwriting, and election fees each time a question is put on a ballot.
11. Homes in the District are assessed at a range of values. Investing in improving and repairing the water delivery infrastructure helps maintain the value of each home accordingly.

Summary of Written Comments Against ABC METRO District Ballot Issue 5B:

The ABC METRO DISTRICT Bond Issue being proposed by the Board of Directors (BOD) should not be passed.

Many of the high cost projects being proposed have been questioned and dismissed over many years. The highest cost project in the bond proposal is the “looped line” estimated to be \$1,700,000. This project was talked about and dropped in the mid ‘90s due to its extravagance. The main reason this was wanted was to increase the water volume in order to sell water to new developments. If this is the case again, then we the residents will carry the burden of financing developers.

In fact, it may surprise a number of residents to find out that there are already existing pipeline “loops” in our subdivisions which have been shut down, instead of being repaired. We should fix the loops we already have first. Of course these are not the grand pipelines which would surround the district (and go close to new undeveloped areas).

The large loop pipeline and some of the other projects are being explained as being needed in case of fire. We are being told that we need to “upsized” a number of pipelines in the district from 6” pipes to 8” pipes. This is not necessary under City or County standards. Of course 8” pipe can carry more water, but realize that in a city, there are many houses per acre. Here within the FVAWD, we measure property by the acres per house. The number one measure for fire insurance and fire fighting is the availability of fire hydrants. The BOD is not proposing adding more fire hydrants, they want bigger pipes.

The BOD proposes to spend \$153,000 to outfit the new replacement well (drilled in 2004) which extends into the Dawson aquifer. This replacement well has been tested to produce only 25 gallons per minute (GPM). The old well generated 30-35 GPM, and it was replaced due to poor water volume. If the Dawson aquifer is now producing low volumes of water, our money is better spent by drilling a backup well down to the Arapahoe aquifer, and pumping that water (if needed) into the same treatment plant as our existing Arapahoe well.

These projects have not been studied enough yet, and the merits of this BOD and SDMS’s project management, fiscal management, and planning capabilities are far too unknown to entrust this amount of money with. \$8 million (\$32 million with interest) is too much money to give to the District Board of Directors. SDMS has not provided enough information about this bond issue, and has not adequately discussed existing alternatives. The Board and SDMS are not providing answers to these questions. We will never be able to generate more money if they are wrong now.

We are far better off by voting NO on this proposal, and instead, proposing another bond for only the well understood, and accepted requirements of our district, for far less money next year.

Summary of Written Comments For ABC METRO District Ballot Issue 5C:

No comments were received by the Constitutional deadline.

Summary of Written Comments Against ABC METRO District Ballot Issue 5C:

No comments were received by the Constitutional deadline.

*\$666,666 (one-third of a \$2M bond issue in 2007) + \$400,000 fiscal year spending = \$1.1M (rounded up)

**used 2007 proposed budget, 8/31/06 actual or 2006 budget (whichever was larger) for enterprise fund, debt service fund, capital improvement fund and general fund) and rounded up

***used draft of Statement of Revenues, Expenditures and Changes in Net Assets page from draft 2005 audit

****the Applications for Exemption from Audit do not have any numbers, they say not able to determine due to embezzlement

*****from the debt service schedule used with the 1998 audit (last legitimate audit on file)

RECORD OF MAIL-IN VOTER BALLOT APPLICATIONS

ELECTION HELD Tuesday, May 6, 2008.

(regular/special)

Name of Special District

Voter Name and Ballot Address	Precinct Number (if any)	Ballot Number	Date Application Received	Date Ballot Mailed	Date Ballot Returned	Ballot Not Returned or Rejected (State Which)	Date Ballot Returned Undeliverable
		M.I.V. 001					
		M.I.V. 002					
		M.I.V. 003					
		M.I.V. 004					
		M.I.V. 005					
		M.I.V. 006					
		M.I.V. 007					

NOTICE OF MAIL BALLOT ELECTION

C.R.S. 1-7.5-107(2.5)(a) and 1-5-205(1)(a) to (1)(d)

TO WHOM IT MAY CONCERN and particularly to the electors of the _____
_____ District of _____ County,
State of Colorado.

NOTICE IS HEREBY given that a regular election of the _____
_____ District shall be held on Tuesday, May 6, 2008, from 7:00 AM until 7:00 PM. The election is being conducted as a mail ballot election. If you are an active, registered voter who is eligible to vote in the special district, you will automatically receive a mail ballot. Mail ballots will go out to the electorate approximately 25 days before the election.

If you do not receive, or have spoiled your ballot, you may request a replacement ballot by contacting:

Designated Election Official or other Contact Person Telephone Number

Street City State Zip

The office is open Monday through Friday, between the hours of _____ AM and _____ PM, beginning at least 25 days prior to Election Day and from 7:00 AM until 7:00 PM on Election Day.

(district name)

(designated election official)

(designated election official's phone number)

Published in: _____

Published on: _____, 20 ____

PROCEDURAL INSTRUCTIONS: The notice of Mail Ballot Election is to be published at least 20 days before the election in a newspaper of general circulation in the county or counties where the district is located. A copy of the notice should be forwarded to the clerk and recorder of the county (or counties) in which the district is located. A copy of this notice shall be posted in a conspicuous place within the office of the designated election official.

B-41

SAMPLE NOTICE

PUBLIC NOTICE OF FINANCIAL INFORMATION

ABC METRO District Election
May 6, 2008

NOTICE IS HEREBY GIVEN by the Board of Directors of the above referenced political subdivision of the information required under Section 1-7-908(1)(a) thru (v), C.R.S.

	FY 2004	FY 2005	FY 2006 ¹	FY 2007 ¹	Projected FY 2008 ²
General Fund Balance (Ending)	N/A	N/A	\$193	\$1,009	\$-0-
General Fund Revenues	N/A	N/A	\$40,958	\$34,639	\$53,389
General Fund Expenditures	N/A	N/A	\$40,765	\$33,630	\$54,398
Debt Service Fund Balance (Ending)	N/A	N/A	\$-0-	\$-0-	\$-0-
Debt Service Fund Revenues	N/A	N/A	\$-0-	\$-0-	\$30,343,534
Debt Service Fund Expenditures	N/A	N/A	\$-0-	\$-0-	\$376,698
Capital Projects Fund Balance (Ending)	N/A	N/A	\$-0-	\$-0-	\$-0-
Capital Projects Fund Revenues	N/A	N/A	\$212,190	\$191,500	\$21,000,000
Capital Project Fund Expenditures	N/A	N/A	\$212,190	\$191,500	\$7,000,000
Amount of Short-Term Debt Incurred ³	N/A	N/A	N/A	N/A	\$-0-
Emergency Fund Fully Funded in General Fund? ⁴	N/A	N/A	YES	YES	YES

¹ Information is based on actual figures where available and estimated figures when unavailable.

² Projected information for the current fiscal year is based on estimated figures.

³ Amount of any debt or other financial obligation incurred by the District for cash flow purposes that has a term of not more than one year.

⁴ If the emergency reserve fund is not fully funded by cash or investments, as required by the Colorado Constitution, it must include in this notice a statement of reasons for not fully funding the reserve.

The District's audit exemption statements for the last four fiscal years in which the District has been in operation; management letters, if any; and budget for the current fiscal year are available for public review at: ABC METRO District's business office, 1234 ComeNSeeIt Ave., Ste 100, Denver, CO 80203.

Procedural Instructions: This notice shall be posted at least 20 days before the election at on the district's webpage if the district has one and in the office of the district.

OATH OF CANVASSER

1-10-201(5), C.R.S.

I, _____, do solemnly swear or affirm that I am a registered
(Printed Name of Canvasser)
elector in the district of _____, county(ies) of _____
_____ and of the State of Colorado and that I will faithfully perform the duties required
of a member of the canvass board for the _____ District, who is holding a May 6,
2008 Regular Special District Election.

(canvasser signature) (date)

STATE OF COLORADO)
)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20_____,
by _____ .
(designated election official)

Polling place – Designation by sign: All polling places shall be designated by a sign, conspicuously posted at least twelve days before each election. The lettering on the sign shall be black on a white background. The letters and numerals shall be at least four inches in height. The sign shall be substantially in the following form:

**“POLLING PLACE FOR
PRECINCT NO _____”**

OF THE

_____ **District**

**Election to be held on
Tuesday, May 6, 2008**

Hours: 7:00 AM to 7:00PM

**Procedural Instructions for
NOTICE OF ELECTION
(Polling Place)**

Two year terms will only be used in an organizational election, when a district is first establishing its board of directors, or when a vacancy has been filled by appointment and the remaining unexpired portion of the term must be filled by election.

This notice is to be published no later than 10 days before the election.

If a district is in more than one county this notice does not have to be published in the other counties where the population is less than fifty.

If you choose to notify your electorate, of the polling place election by postcard, it does not exempt you from the publication requirement of this notice. 1-5-206(2)(a), C.R.S.

A copy of this notice shall be posted at least ten days prior to the election and until two days after the election in a conspicuous place in the office of the designated election official.

Mail a copy of this notice to the county clerk and recorders of the counties in which the district is located.

For November elections only, you must provide an early voting location. The location must be identified in the notice. (1-5-205(1)(b), C.R.S.)

CERTIFICATE OF APPOINTMENT & OATH OF WATCHER

C.R.S 1-7-105 et seq.

_____ COUNTY, COLORADO

TO THE ELECTION JUDGES IN

Date _____

Precinct _____

or TO THE DESIGNATED ELECTION OFFICIAL

Who can be a Watcher? An eligible elector, other than the candidate, who has been selected and certified by one of the persons listed below and authorized to certify. If selected by a political party chairperson, a party candidate or an unaffiliated candidate, the Watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder, pursuant to C.R.S 1-1-104(51).

Who cannot be a Watcher? A candidate on the ballot, or a member of the candidate's immediate family by blood or marriage to the second degree, pursuant to C.R.S 1-7-108(2).

Directions to the Watcher: Surrender this completed certificate to the election judges or designated election officials at the time you enter the polling place or early voting site or absentee processing/counting site or provisional processing/counting site or recount site. You will then be sworn in by attending judges or by the designated election official. C.R.S 1-7-106

Check appropriate blanks:

Type of Election:

Who is entitled to have a Watcher:

Who shall certify appointment:

<input type="checkbox"/> Special District Regular Biennial Election C.R.S 32-1-805	_____ candidate..... _____ proponent of ballot issue/question..... _____ opponent of ballot issue/question.....	Candidate Proponent of Ballot Issue/Question Opponent of Ballot Issue/Question
<input type="checkbox"/> Coordinated Election C.R.S 1-7-107	_____ candidate..... _____ proponent of ballot issue/question..... _____ opponent of ballot issue/question.....	Candidate Proponent of Ballot Issue/Question Opponent of Ballot Issue/Question
<input type="checkbox"/> Recall Election C.R.S 1-12-113	_____ official subject to recall..... _____ candidate on the recall ballot.....	Election Official subject to recall Candidate
<input type="checkbox"/> Recount SOS Rule 8.11	_____ candidate involved in recount..... _____ proponent of issue/question involved in recount..... _____ opponent of issue/question involved in recount.....	Candidate involved in recount Proponent of Recount Issue/Question Opponent of Recount Issue/Question

APPOINTMENT OF WATCHER

_____ is hereby certified to act as a Watcher for the election as specified above.

(Printed name of Certifying Official) _____ (Title of Certifying Official) _____

(Signature of Certifying Official) _____ Date Signed _____

Received by _____
Designated Election Official

OATH OF WATCHER
C.R.S 1-7-108(1)

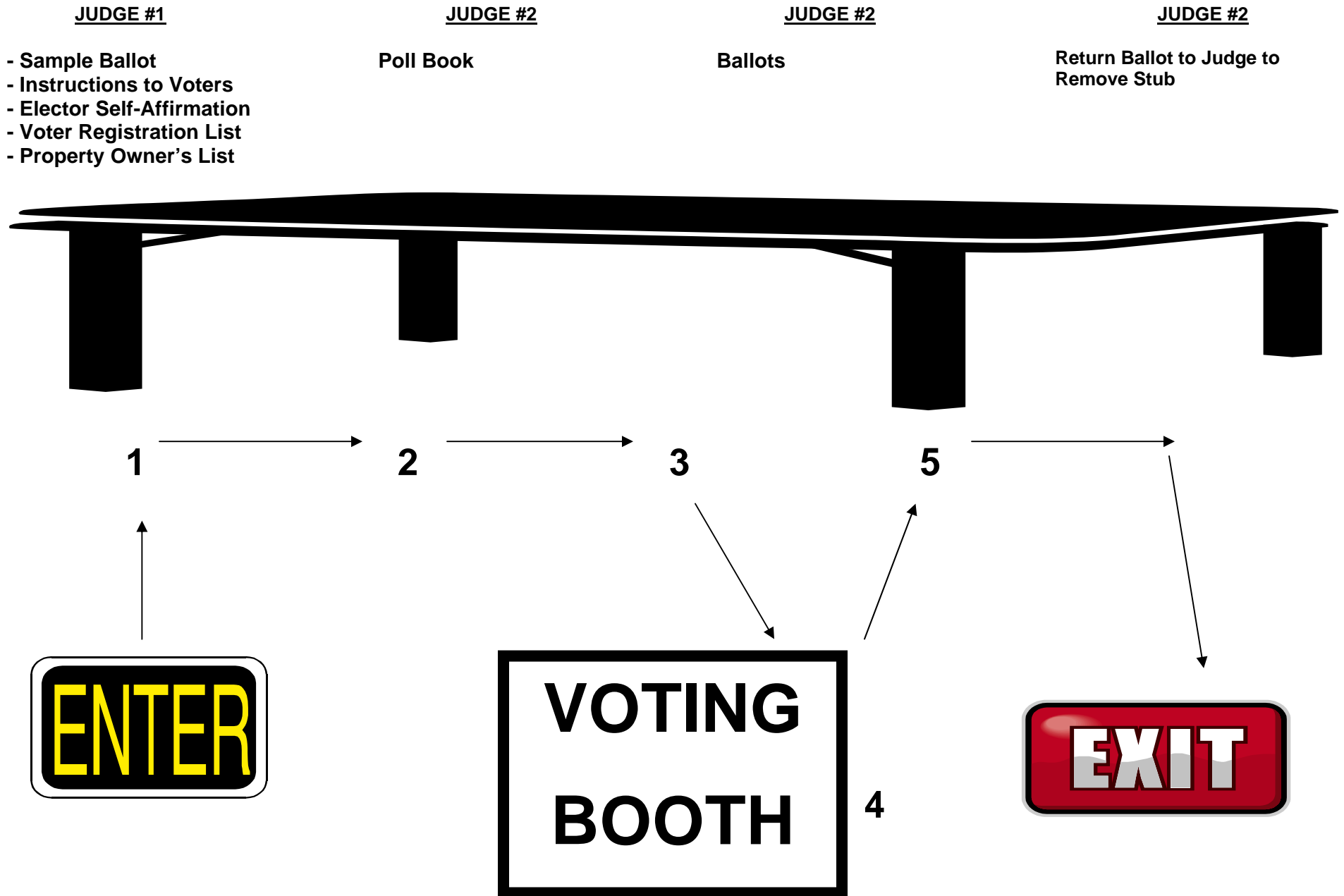
I, _____, do solemnly swear that I am an eligible elector, that my name has been submitted to the designated election official, and that I will not in any manner make known to anyone the result of counting votes until the polls have closed.

Signature of Watcher

Signature of Election Judge or Designated Election Official Administering Oath

SOS Approved 4.17.2006

Polling Place Diagram



ITEMS TO BE POSTED AT THE POLLING PLACE

1-5-504.5, C.R.S.

The following shall be posted at each polling place on or before Election Day:

Polling Place Sign visible from the outside of the closest entrance to the polling place.

No Electioneering permitted within 100 feet of the polling place.

Instruction Cards for the guidance of eligible electors.

Sample Ballots

An Explanation of the Procedures that govern the provision of voting assistance to electors with disabilities who require such assistance.

“NO ELECTIONEERING” SIGN

NO ELECTIONEERING

**WITHIN 100 FEET OF ANY BUILDING IN
WHICH A POLLING PLACE IS LOCATED**

(Colorado Revised Statute 1-13-714)

Procedures: Election judges should take turns walking the perimeter of the polling site several times a day. Remove any signs or other electioneering material that are within the 100-foot limit. Remember to check booths for discarded sample ballots. No newspapers or magazines that can have election material on or in them are permitted in the voting area. Electors cannot wear clothing that promotes or opposes an issue or candidate in the voting area. Violators should, politely, be asked to refrain from the behavior, put a jacket over the offensive clothing, remove a hat, put away a newspaper, etc... If a voter is belligerent and fails to comply report it to the DEO immediately.

INSTRUCTION CARDS

1-5-504, C.R.S.

The designated election official of each political subdivision shall furnish to the election judges a sufficient number of instruction cards for the guidance of eligible electors in preparing their ballots.

The election judges shall post at least one of the cards in each polling place upon the day of the election.

The cards shall be printed in large, clear type and shall contain full instructions to the eligible electors as to what should be done TO:

- (a) obtain ballots for voting;
- (b) prepare the ballots for deposit in the ballot box;
- (c) obtain a new ballot in the place of one spoiled by accident or mistake;
- (d) obtain assistance in marking ballots; and
- (e) vote for a write-in candidate.

NOTICE

Voting Assistance for Electors with Disabilities

Colorado law provides that a voter has a legal right to assistance in voting if assistance is needed because of blindness or other physical disability or inability to read or write. The following procedures apply:

1. The voter must tell one of the election judges that he or she needs assistance.
2. The voter may be assisted by any election judge or by any eligible elector selected by the voter.
3. The person selected must complete a “voter assistance/disabled voter self-affirmation form” if all of the following apply:
 - the person selected is not an election judge, and
 - the person selected is not the spouse, parent, grandparent, sibling, or child of the voter requesting assistance, and
 - the person selected has previously assisted any other voter at the same election in the same precinct.

The self affirmation form states, “I _____, certify that I am the individual chosen by the disabled elector to assist the disabled elector in casting a ballot.”

4. The person selected may provide any assistance needed by the voter, including entering the voting booth and preparing the ballot or operating the voting machine.
5. The person providing assistance shall not seek to persuade or induce the voter to vote in a particular manner.
6. The election judges shall record the name of each eligible elector assisted and the name of each person assisting by making an entry on the poll book or list of eligible electors (or by making an entry on the signature card when preprinted signature cards are used in the place of a poll book and list of eligible electors).

REFERENCE: SECTIONS 1-5-504.5 (I), 1-7-111 AND 1-7-113 COLORADO REVISED STATUTES

POLL BOOK

1-7-109, 1-7-111(3), C.R.S.

An election held at _____ in Polling Place No. _____, in the _____ District
in the County of _____, State of Colorado, on the 6th day of May, 2008, at which time _____
_____ were judges of said election and
_____ was the Designated Election Official for said election, the following named persons voted in
regular succession:

Ballot Number	Name of Voter (Printed)	Name of Person Assisting, If Any
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

etc.

Total No. of Votes Cast: _____

SELF-AFFIRMATION OF ELECTOR

To be used for: 1-7-103(2), 1-7-104, 1-7-110(1),
32-1-103(5), 32-1-806, C.R.S.
Use with mail-in ballot
and for Voter Signature Card at Polling Place

_____ DISTRICT
_____ COUNTY, STATE OF COLORADO

I do solemnly swear or affirm that I, _____
(print name)
who reside at _____
(address) am an eligible elector
of this _____ District and desire to vote at
(name of special district)
this regular special district election.

I swear or affirm that I am registered to vote in the State of Colorado and I am qualified to vote in this special district election as: (Indicate applicable phrase by placing a cross (X) on the line preceding the appropriate words.)

- _____ A resident of the district (or the area to be included within the special district) for not less than thirty days; **or**
- _____ The owner of taxable real or personal property situated within the boundaries of the special district (or the area to be included within the special district)
Property Address: _____; **or**
- _____ A person who is obligated to pay taxes under a contract to purchase taxable property in the special district (or the area to be included within the special district);
Property Address: _____; **or**
- _____ The spouse of _____ who is the owner of taxable real or personal property situated within the boundaries of the special district (or the area to be included within the special district).
Spouse's Property Address: _____

I have not voted previously at this election, nor will I cast a vote by any other means in this election.

NOTICE OF PERJURY

ANY PERSON WHO AFFIRMS WILLFULLY, CORRUPTLY, and FALSELY that he/she is an elector commits perjury and is punishable according to law.

1-13-104, C.R.S.

(Elector's signature)

(Date)

PROCECURAL INSTRUCTIONS: This document can be used as the voter sign in card at the polls. Whenever a judge cannot positively determine eligibility of an elector because the voter's name is not on either the voter registration list or the property owner's list, the judge should give the voter a provisional ballot and provisional envelope. Eligibility will be determined by the designated election official, before the ballot is counted.

PROVISIONAL BALLOT AFFIDAVIT & ENVELOPE

IMPORTANT: READ INFORMATION ON OTHER SIDE

VOTER MUST COMPLETE ALL REQUIRED INFORMATION AND SIGN THE AFFIDAVIT BELOW

Are you a citizen of the United States? (Required) <input type="checkbox"/> YES <input type="checkbox"/> NO If you checked "NO" to this question, DO NOT COMPLETE THIS FORM.			Will you be 18 years of age on or before Election Day? (Required) <input type="checkbox"/> YES <input type="checkbox"/> NO If you checked "NO" to this question, DO NOT COMPLETE THIS FORM.		
Last Name (Required)		First Name (Required)	Middle Name	Suffix (Jr., III)	Previous Name of Applicant (If Applicable)
Colorado Legal Residence Street Address (Required) – No P.O. Boxes			Apt/Unit #	City/Town (Required)	Zip (Required)
Mailing Address or P.O. Box (Required) if different from address above			Apt/Unit #	City/Town (Required)	Zip (Required)
Date of Birth (Required) MM / DD / YYYY	Gender (Required) <input type="checkbox"/> Male <input type="checkbox"/> Female	Telephone Number (Including Area Code)	Party Affiliation: (Required to vote in a party's Primary Election) <input type="checkbox"/> Democratic <input type="checkbox"/> Republican <input type="checkbox"/> American Constitution <input type="checkbox"/> Green <input type="checkbox"/> Gun Owner's Rights <input type="checkbox"/> Libertarian <input type="checkbox"/> Pro Life <input type="checkbox"/> Reform <input type="checkbox"/> Unaffiliated		

IDENTIFICATION (Required)

DO NOT LEAVE THIS SECTION BLANK

Pursuant to Federal Law, your completed voter registration form must contain your State of Colorado Driver's License Number or your Dept. of Revenue Identification Number. If you do not have a Driver's License or Dept. of Revenue Identification Number, then you must provide the last four digits of your Social Security Number. If you do not have a Driver's License Number, a Dept. of Revenue Identification Number, or a Social Security Number, you must check the appropriate boxes. A unique identifying number will be assigned to you by the State and you will still be registered to vote.

NOTE: If the identification section is left blank and you do not check the boxes indicating you do not have identification, you will not be registered to vote.

_____ OR _____
Colorado Driver's License Number Department of Revenue ID Number

I do not have a Colorado Driver's License or Dept. of Revenue Identification Number.

OR

If you do not have a Colorado Driver's License, or a Department of Revenue Identification Number, then provide at least the last four digits of your Social Security Number.

_____ Social Security Number

I do not have a Social Security Number.

PREVIOUS RESIDENCE INFORMATION:

When did you move to the address shown above? _____
MM DD YYYY

Do you believe you are registered to vote in this county? YES NO If you answered Yes, please complete below.

Provide the address at which you believe you are registered. _____
Street Address Apt/Unit # City/County State Zip

Place a (✓) in the box if you choose to be added to, or removed from, the Permanent Mail-In Ballot List or the November Election only.

<input type="checkbox"/> Add my name to the List	Address to mail your Mail-In Ballot(s) to - If different than your mailing or residential address
<input type="checkbox"/> Remove my name from the List	
<input type="checkbox"/> November Election Only	Street Address Apt/Unit # City/Town State Zip Code

READ, SIGN AND DATE:

By completing and signing this Voter Registration Application, you are affirming the following information:

(a) You intend to claim the present address as your sole legal place of residence and, in so doing, abandon claim to any other legal residence. (b) You are aware that, if you are a resident of this state for voting purposes, you are also a resident of this state for motor vehicle registration and operation purposes and for income tax purposes. (c) You cannot legally vote in more than one place in any election. (d) You are aware that a violation of the self-affirmation, of which you are about to make, is a criminal act under the laws of this state and you will be subject to the penalties provided by law.

WARNING: It is a crime to swear or affirm falsely as to your qualifications to register to vote.

Self Affirmation: I do solemnly affirm that I am a citizen of the United States, that I have attained the age of eighteen years, and that I have resided in the State of Colorado and in my present precinct at least 30 days before the election, or at my current residence address as shown above. I further affirm that the address indicated in this affidavit is my sole legal residence and that I claim no other place as my legal residence. I affirm that if I applied for a Mail-In Ballot I have not and will not cast the Mail-In Ballot that I requested. I further affirm under penalty of law that I have not and will not cast any vote in this election except by the enclosed ballot, that I will not vote in any other precinct, county or state, and that my ballot is enclosed in accordance with the provisions of the "Uniform Election Code of 1992", Article 1 to 13 of Title 1, Colorado Revised Statutes.

Signature or Mark (Required)

X

Signature (Required)

Date Signed (Required) _____
MM DD YYYY

This Section is for Election Official Use Only

POLLING PLACE/ VOTE CENTER USE:

ID Provided? YES NO Type of ID _____

Voting Location/Precinct # _____

BALLOT STYLE (Required) _____ Judge's Initials _____

VRD or Agency Receipt Provided and Attached? YES NO

Registered at Voter Registration Drive or Agency? YES NO

Name & Location of Agency : _____

Date: _____ / _____ / _____ Time: _____

ELECTION OFFICE USE:

Two Election Judges of different party affiliation must initial below.

Judge's Initials: _____ Judge's Initials: _____

Voting Location/Precinct # _____ Ballot Style _____

COUNT CODE: _____

DO NOT COUNT

Comments: _____

**SEAL YOUR VOTED BALLOT IN THIS ENVELOPE
and return it to an Election Judge**

This sealed envelope will be forwarded to the Designated or Coordinated Election Official's Office. If your eligibility to vote can be verified, your provisional ballot will be counted. Keep the receipt provided by the election judge. It provides information on how you may determine the status of your provisional ballot. If, for any reason, your provisional ballot cannot be counted it will remain sealed in this envelope pursuant to Colorado law.

**YOU HAVE BEEN ASKED TO VOTE A PROVISIONAL BALLOT FOR
ONE OF THE FOLLOWING REASONS:**

➤ **YOU WERE UNABLE TO PROVIDE ACCEPTABLE, VALID IDENTIFICATION AS REQUIRED BY LAW.**

➤ **YOUR VOTING ELIGIBILITY CANNOT BE VERIFIED BY THE POLLING PLACE ELECTION JUDGE TODAY.**

The Designated or Coordinated Election Official's Office will check the registration records. If further research determines you are eligible to vote in this precinct or polling place, your provisional ballot will be counted.

If you are otherwise eligible to vote, but chose not to vote in your assigned precinct or authorized polling location, only your votes for Federal and Statewide races, questions and issues will be counted, pursuant to law.

➤ **YOU WERE PREVIOUSLY REGISTERED IN THE STATE OF COLORADO AND YOU HAVE MOVED WITHIN THE STATE BUT DID NOT RE-REGISTER.**

Your prior registration will be verified by the Designated or Coordinated Election Official's Office. Your voter registration will then be updated with your current address.

➤ **THE RECORDS INDICATE YOU REQUESTED A MAIL-IN BALLOT OR EARLY VOTING BALLOT FOR THIS ELECTION.**

If the Designated or Coordinated Election Official's Office can verify that you have not cast a mail-in ballot or early voting ballot for this election, then your provisional ballot will be counted.

IMPORTANT!

This may be used as a voter registration for future elections and any previous voter registration may be cancelled.

YOUR PROVISIONAL BALLOT WILL NOT BE COUNTED IF:

- You DO NOT SIGN THE AFFIDAVIT on the other side of this envelope;
- You moved to Colorado within 30 days before the election **OR** moved to Colorado and did not register before the registration deadline.

YOUR PROVISIONAL BALLOT MAY NOT BE COUNTED IF:

- You DO NOT COMPLETE THE AFFIDAVIT on the other side of this envelope.

If you moved to Colorado within 30 days before the election **OR** moved to Colorado and did not register before the registration deadline, your **PROVISIONAL BALLOT WILL NOT BE COUNTED.**

Permanent Mail-In Ballot Information

After the County Clerk & Recorder receives your completed application or letter to receive a Permanent Mail-In Ballot, your name will be placed on a list to receive a Mail-In Ballot for each applicable election.

Once your name is placed on the list to receive a Permanent Mail-In Ballot, you will remain on the list until one of the following:

- You send a letter, or fill out this form and select the check box "Remove my name from the list." Send the letter or completed form to your County Clerk's Elections Office.
- Your Mail-In Ballot is returned to the County Clerk & Recorder as undeliverable.
- Your voter registration record is marked "Inactive."

VOTER ASSISTANCE FORMS FOR USE AT POLLING PLACE

C.R.S. 1-7-111

Voter Assistance Form for Electors Needing Assistance Due to a Disability or Inability to Read or Write

C.R.S. 1-7-111 provides that a voter may request assistance because of blindness, other physical disability, inability to read or write or difficulty with preparing the ballot or operating the voting machine.

The voter may request the assistance of any eligible elector; however, any person other than an election judge or the spouse, parent, grandparent, sibling or child eighteen years or older of the elector requesting assistance, who assists more than one eligible elector, must complete the following self-affirmation:

Print name(s) of elector(s) requesting assistance:
(Use additional form(s) if more room is needed.)

(1) _____ (2) _____

(3) _____ (4) _____

“I, _____ , certify that I am the individual chosen by the disabled
(PRINT NAME)

elector(s) to assist the disabled elector(s) in casting a ballot.”

X _____
SIGNATURE OF PERSON GIVING ASSISTANCE DATE

C.R.S. 1-7-112

Voter Assistance Form for Non-English Speaking Electors

C.R.S. 1-7-112 provides that a voter may request assistance because of difficulties with the English language.

An election judge or designated election official may assist more than one voter. At the voter’s request, any eligible elector may provide assistance provided the person is fluent in English and the language of the voter. Any person who assists any eligible elector to cast his or her ballot must complete this form and sign the following self-affirmation:

Print name of elector requesting assistance:
(Use a separate form for each voter)

“I, _____ , shall not in any way attempt to persuade or induce the
(PRINT NAME)

elector to vote in a particular manner nor will I cast the elector’s vote other than as directed by the elector whom I am assisting.”

X _____
SIGNATURE OF PERSON GIVING ASSISTANCE DATE

C.R.S. 1-7-112

Forma de Ayuda del Votante Para Los Electores que No Hablan Inglés

CRS 1-7-112 proporciona que un votante puede solicitar ayuda debido a dificultades con el lenguaje Inglés.

Un juez de la elección o un funcionario señalado de la elección puede asistir a más de un votante. En la petición del votante, cualquier elector elegible puede proporcionar ayuda, con tal que la persona sea fluida en inglés y la lengua del votante. Cualquier persona que asista a cualquier elector elegible para completar su balota debe llenar el siguiente formulario y firmar la afirmación del uno mismo.

Impresión el nombre del elector que solicita ayuda: (Utilice una forma separada para cada votante que solicita ayuda.)

“Yo, _____ , de ninguna manera intentare a inducir o presionar al
(IMPRESIONE NOMBRE)

elector que vote en una manera particular ni votare el voto del elector con la excepción segun dirigido por el elector a que estoy asistiendo.”

X

FIRMA DE LA PERSONA AYUD

FECHA

VOTER CHALLENGE SPECIAL DISTRICT PROPERTY OWNER ONLY

Polling Place: _____

Precinct # _____

Ballot # _____

Who may be challenged: A person's right to vote at a polling place or in an election may be challenged. (1-9-201).

Who may challenge: Any eligible elector of the precinct, a watcher, or an election judge who is present at the time of the challenge process (1-9-201) and who believes the person intending to vote is not an eligible elector.

ALL CHALLENGE FORMS MUST BE RETURNED TO THE COUNTY CLERK AND RECORDER

CHALLENGE

Date _____

Withdrawn by challenger: _____
(If withdrawn, challenger initials on line)

I swear or affirm, under penalty of perjury, that I am eligible to challenge and that to the best of my belief, the person named below does not fulfill one or more of the requirements of an elector as required by law and is not entitled to vote at this precinct and this election.

Signature and address of challenger: _____

Signature
Printed Name
Phone #

Physical residence address (include apartment, space or unit number)
Mailing address
City/state
Zip

Name and address of person challenged: _____
Please Print

Physical residence address (include apartment, space or unit number)
Mailing address
City/state
Zip

Basis for challenge: Property Owner _____ Other (explain) _____

Signature of judge who administers challenger's oath _____

Signature
Printed Name

QUESTIONS OF CHALLENGED VOTER

One of the Judges shall ask the following questions (C.R.S. 1-9-203):

CHALLENGE: PROPERTY OWNER If the person is challenged as not eligible because the person is not a property owner or the spouse of a property owner, the judge shall ask the following questions:

- (a) Are you a property owner or the spouse of a property owner in this political subdivision and therefore eligible to vote? Yes _____ No _____
- (b) What is the address or, for special district elections where an address is not available, the location of the property which entitles you to vote in this election? _____

OATH OF CHALLENGED VOTER

(Challenged elector must subscribe to the following oath)

I do solemnly swear or affirm that I have fully and truly answered all questions that have been put to me concerning my place of residence and my qualifications as an eligible elector at this election. I further swear or affirm that I am a citizen of the United States of the age of 18 years or older, that I have been a resident of this state for 30 days immediately preceding this election and have not maintained a home or domicile elsewhere, that I am a registered elector in this state, that I am eligible to vote at this election, and that I have not previously voted at this election.

Signature of challenged person: _____ Phone # _____

Signature of election judge who administers challenged voter's oath _____

INSTRUCTIONS TO ELECTION JUDGE: After the challenged elector has answered the questions and taken the oath, a regular ballot shall be given and an election judge shall write "sworn" on the poll book next to their name. IF THE VOTER DOES NOT TAKE THE OATH OR DOES NOT SATISFACTORILY ANSWER THE QUESTION(S), OFFER THE VOTER A PROVISIONAL BALLOT [1-9-204(2)]

Check box if challenge was withdrawn Check box if challenged voter left the polling place without voting

Polling Place: _____

VOTER CHALLENGE

Precinct # _____

Ballot # _____

Who may be challenged: A person's right to vote at a polling place or in an election may be challenged. (1-9-201).

Who may challenge: Any eligible elector of the precinct, a watcher, or an election judge who is present at the time of the challenge process (1-9-201) and who believes the person intending to vote is not an eligible elector.

ALL CHALLENGE FORMS MUST BE RETURNED TO THE DESIGNATED ELECTION OFFICIAL

Date _____

CHALLENGE

Withdrawn by challenger: _____

(If withdrawn, challenger initials on line)

I swear or affirm, under penalty of perjury, that I am eligible to challenge and that to the best of my belief, the person named below does not fulfill one or more of the requirements of an elector as required by law and is not entitled to vote at this precinct and this election.

Signature and address of challenger: _____

Signature

Printed Name

Phone #

Physical residence address (include apartment, space or unit number)

Mailing address

City/state

Zip

Name and address of person challenged: _____

Please Print

Physical residence address (include apartment, space or unit number)

Mailing address

City/state

Zip

Basis for challenge: Citizenship _____ Residency _____ Age _____ Other (explain) _____

Signature of judge who administers challenger's oath: _____

Signature

Printed Name

QUESTIONS OF CHALLENGED VOTER

One of the Judges shall ask the following questions (C.R.S. 1-9-203):

CHALLENGE: CITIZENSHIP If the person is challenged as not eligible because the person is not a citizen, the judge shall ask the following question: (a) Are you a citizen of the United States? Yes _____ No _____

CHALLENGE: RESIDENCE If the person is challenged as not eligible because the person has not resided in this state and precinct for thirty days immediately preceding the election, a judge shall ask the following questions:

(a) Have you resided in this state and precinct for the 30 days immediately preceding this election? Yes _____ No _____

(b) Have you been absent from this state during the 30 days immediately preceding this election? Yes _____ No _____

(c) During that time have you maintained a home or domicile elsewhere? Yes _____ No _____

(d) If so, when you left, was it for a temporary purpose with the intent of returning, or did you intend to remain away? _____

(e) Did you, while absent, look upon and regard this state as your home? Yes _____ No _____

(f) Did you, while absent, vote in any other state or any territory of the United States? Yes _____ No _____

CHALLENGE: AGE If challenged as not eligible because the person is not eighteen years of age, the judge shall ask the following question:

(a) To the best of your knowledge and belief, are you 18 years of age or older? Yes _____ No _____

OATH OF CHALLENGED VOTER

(Challenged elector must subscribe to the following oath)

I do solemnly swear or affirm that I have fully and truly answered all questions that have been put to me concerning my place of residence and my qualifications as an eligible elector at this election. I further swear or affirm that I am a citizen of the United States of the age of 18 years or older, that I have been a resident of this state and precinct for 30 days immediately preceding this election and have not maintained a home or domicile elsewhere, that I am a registered elector in this precinct, that I am eligible to vote at this election, and that I have not previously voted at this election.

Signature of challenged person: _____ Phone # _____

Signature of election judge who administers challenge voter oath _____

INSTRUCTIONS TO ELECTION JUDGE: After the challenged elector has answered the questions and taken the oath, a regular ballot shall be given and an election judge shall write "sworn" on the poll book next to their name. IF THE VOTER DOES NOT TAKE THE OATH OR DOES NOT SATISFACTORILY ANSWER THE QUESTION(S), OFFER THE VOTER A PROVISIONAL BALLOT [1-9-204(2)]

Check box if challenge was withdrawn Check box if challenged voter left the polling place without voting

BALLOT LOG

An election was held by mail. Ballots were issued from {Insert District name & address}, {Insert County}, State of Colorado. Ballots were returned to the same address, and only those received no later than 7:00 P.M. on the 6th Day of May, 2008 were counted. The judges present for tallying of mail ballots and the creation of the judge's abstract of votes were {Insert Names of Judges}. The designated election official was also present for the overseeing of counting ballots. {Insert Name of DEO} was the Designated Election Official for said Election. The following is a detailed account of all ballots issued, returned, & replaced.

Name and Address of Voter	BALLOT NO.	Date Mailed	Date Returned Completed	Date Returned as undeliverable	ID Compliant	Comments
	001	4/11/07				
	002	4/11/07				
	003	4/11/07				
	004	4/11/07				
	005	4/11/07				
	006	4/11/07				
	007	4/11/07				
	008	4/11/07				
	009	4/11/07				
	010	4/11/07				
	011	4/11/07				
	012	4/11/07				
	013	4/11/07				
	014	4/11/07				
	015	4/11/07				
	016	4/11/07				
	017	4/11/07				
	018	4/11/07				
	019	4/11/07				
	020	4/11/07				
	021	4/11/07				
	022	4/11/07				
	023	4/11/07				
	024	4/11/07				

SOS Rule 41.2.1 The designated election official shall keep a detailed log of all ballots. The designated election official shall begin the log as soon as ballots are ordered and received. The log shall include the polling location and/or precinct number (s), ballot style (s), and account for every ballot that is received and distributed. The detailed log shall be reconciled at the conclusion of each workday.

**ELECTION JUDGES TALLY LIST - May 6, 2008 Regular Special District Election
FOR _____ DISTRICT**

		5	10	15	20	25	30	35	40	45	50	55	60	65
Candidate A	Votes FOR													
	Number of Defective Ballots													
	Overvoted Ballots													
	Undervoted Ballots													
Candidate B	Votes FOR													
	Number of Defective Ballots													
	Overvoted Ballots													
	Undervoted Ballots													
ISSUE 5A	YES													
	NO													
	Number of Defective Ballots													
	Overvoted Ballots													
	Undervoted Ballots													
ISSUE 5B	YES													
	NO													
	Number of Defective Ballots													
	Overvoted Ballots													
	Undervoted Ballots													
QUESTION 500	YES													
	NO													
	Number of Defective Ballots													
	Overvoted Ballots													
	Undervoted Ballots													

JUDGES' UNOFFICIAL ABSTRACT OF VOTES CAST

1-7-602, C.R.S.

For a polling place election held for _____ District
on Tuesday, May 6, 2008.

NOTICE TO THE PUBLIC:

State law requires that provisional ballots, cast in any election, are to be verified prior to counting. Therefore, these election returns do not include properly verified votes that were cast by provisional ballot and, therefore, are UNOFFICIAL returns of votes cast. The district has up to seven (7) days, subsequent to the date of the election, in which to verify and count eligible provisional ballots.

Total number of provisional ballot cast, unverified, and not counted: _____

Ballots counted for the following candidates:

<u>Candidate Name:</u>	<u>Votes Counted For This Candidate:</u>
_____	_____
_____	_____
_____	_____
_____	_____

Ballots counted for and against each ballot issue and ballot question as follows:

Ballot Question/Issue A:
(include ballot title)

Yes

No

Ballot Question/Issue B:
(include ballot title)

Yes

No

By:

_____, Election Judge

_____, Date

_____, Election Judge

_____, Date

PROCEDURAL INSTRUCTIONS: An abstract of votes cast is used only if your district was actually compelled to conduct an election. (1) Copy is to be posted, by the polling place judges, in a conspicuous place (entrance or window), which can be seen from the outside of the polling place. The abstract is to be posted immediately upon completion of the counting and may be removed after 48 hours, following the election.

JUDGES' CERTIFICATE OF ELECTION RETURNS

Polling Place Election

Polling Place # _____, Polling Place Address: _____

IT IS HEREBY CERTIFIED by the undersigned, who conducted the election held in the _____ District, (in polling place no. _____,) in the County of _____, and the State of Colorado, on the 6th day of May, in the year 2008, that after qualifying by swearing and subscribing to their Oaths of Office, they opened the polls at 7:00 a.m., and that they kept the polls open continuously until the hour of 7:00 p.m. on said date, after which they counted the ballots cast for directors of said district and for any ballot issues and ballot questions submitted.

The votes cast for Director of said District, including write-in candidates, for a 4-year term were as follows:

Candidate for Director	Number of Votes Cast
_____	_____ (numeric & spelled out)
_____	_____ (numeric & spelled out)
_____	_____ (numeric & spelled out)

The votes cast for Director of said District, including write-in candidates, for a 2-year term were as follows:

Candidate for Director	Number of Votes Cast
_____	_____ (numeric & spelled out)
_____	_____ (numeric & spelled out)
_____	_____ (numeric & spelled out)

That the votes cast for and against each ballot issue and ballot question submitted were as follows:

	YES	NO
Ballot Issue\Question A	_____	_____
	(numeric & spelled out)	(numeric & spelled out)
Ballot Issue\Question B	_____	_____
Etc.	(numeric & spelled out)	(numeric & spelled out)

JUDGES' CERTIFICATE OF ELECTION RETURNS
DISTRICT

Mail Ballot Election – May 6, 2008

Central Counting Facility Address: _____

IT IS HEREBY CERTIFIED by the undersigned, who assisted in the conduct of the regular biennial special district election held in the _____ District, in the County of _____, and the State of Colorado, on the 6th day of May, in the year 2008, that after qualifying by swearing and subscribing to their Oaths of Office, counted the ballots cast for directors of said district and for any ballot issues and/or ballot questions submitted.

It is hereby identified and specified that:

Numeric & Spelled Out

Number of ballots sent out:	(_____) _____
Number of ballots returned:	(_____) _____
Number of undeliverable ballots (Returned by the Post Office)	(_____) _____
Number of replacement ballots issued: (A ballot requested by an eligible elector if the ballot was destroyed, spoiled, lost, or for some reason not received.)	(_____) _____
Number of replacement ballot returned:	(_____) _____
Number of mail-in ballots issued:	(_____) _____
Number of mail-in ballots returned:	(_____) _____
Number of return-verification envelopes in non-compliance:	(_____) _____
Number of spoiled ballots returned:	(_____) _____
Number of unused ballots:	(_____) _____
Number of defective ballots:	(_____) _____
Number of first time voter ballots returned without adequate identification	(_____) _____

ALL UNUSED BALLOTS, SPOILED BALLOTS, AND STUBS OF BALLOTS SHALL BE RETURNED TO THE DEO WITH THIS STATEMENT.

Certified by us:

_____, Election Judge
 _____, Election Judge
 _____, Election Judge

_____, 20____
 (date)

JUDGES' EXPENSE BILL - PAY SHEET

To be filled out and returned to the designated election official with all other election materials. Failure to provide all information requested on this form will result in a judge having to appear in person before a check can be processed.

_____ Polling Place Number (If Applicable), of the _____ District,
 _____ County, STATE OF COLORADO.

Judge's Name & Mailing Address	Service	Amount Claimed	Total
TO:	Judge of Election _____ Social Security Number		
TO:	Judge of Election _____ Social Security Number		
TO:	Judge of Election _____ Social Security Number		
TO:	Judge of Election _____ Social Security Number		
TO:	Judge of Election _____ Social Security Number		
TO:	Supply Judge of Election _____ Social Security Number		

We, the undersigned Judges of Election in _____ District, certify that we served as Judges of Election at the _____ District election on Tuesday, May 6, 2008 and that we were present continuously from the opening of polls, until all votes were counted, and the unofficial abstract of votes were posted.

(signature)

(signature)

(signature)

(signature)

(signature)

(signature)

RECEIPT FOR RETURN OF ELECTION MATERIALS

_____, 20 ____

Received from _____
(name)

Supply Judge of Election of _____ District

Election Polling Place No. _____:

_____ Election Returns

_____ Ballot Box

_____ Poll Book

_____ Provisional Ballot Envelopes

_____ Copies of Identification (There will not be copies at a polling place election. Voters will simply show necessary documentation and the judge will note it in the poll book.)

_____ All Other Election Materials

_____ Comments

(designated election official)

_____ District

_____ County, State of Colorado

(Precinct/Polling Location)

Date: _____

(District Name)

Provisional Ballot Log

(Election Type) Election (Date)

Check-off boxes if you have the appropriate information on the Provisional Ballot Envelope

VOTER ID# (Optional)	Last	First	M.I.	Previous Name (If Applicable)	Residence Address (Optional)	Mailing Address (Optional)	City/Zip (Optional)	CITZ	AFF	SSN	DL# or CO ID	Signature On Envelope	DOB	Counted Y or N	Acceptance or Rejection Code
567892	Smith	James	R	N/A	123 Park	N/A	Hometown, CO 12345	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1/1/1970	N	AOK

*Reasons Provisional Ballot Accepted or Rejected w/ applicable Codes:

Accepted:

- AOK**-Reviewed and confirmed voter's eligibility
- ADB**-Elector was erroneously sent to the wrong precinct or given the wrong ballot style
- AEJ**-Election Judge who is appointed after close of Early and Absentee voting and is working outside his/her precinct
- AAB**-Voter affirmed under oath that he/she applied for an absentee ballot and did not cast the absentee ballot
- ACP**- Voter moved from the Colo. county in which previously registered not less than thirty days before the election and voted in the correct precinct in the new county
- AFS**-Voter moved from the Colo. county in which previously registered less than thirty days before the election and voted in the wrong county. Only votes statewide and federal offices/questions shall be counted.

- AVD**-Voter registered through a VRD and the application receipt was surrendered to the election judge
- AAG**-Voter registered through an agency and application receipt was surrendered to the election judge
- ARD**-Incomplete voter registration. The required information was provided by voter on the provisional ballot envelope

Rejected:

- RFS**-No federal or state candidates or issues to duplicate
- RNS**-Provisional Ballot Affidavit not signed
- RIN**- Incomplete information provided, unable to confirm voter's eligibility
- RNR**-Voter not registered by the deadline or by emergency registration, or was previously cancelled
- REE**- Provisional ballot envelope is empty
- RAB**- Voter voted absentee ballot
- REV**- Ballot cast in early voting
- RIP**- Incorrect Party in Primary Election
- RFE**- Felon not eligible to vote
- RWC**-Non-county or non-state resident, not eligible to vote in the county where the provisional ballot was voted.
- RID**-First time voter has not provided identification upon registration or during the time of voting
- RRD**- Registration deficient or incomplete

Total # Requested _____

Total Accepted _____

Total Rejected _____

Verifier's Signature _____

Verifier's Signature _____

CANVASSERS ABSTRACT OF VOTES

1-10-203, C.R.S.

For an election held for _____ District on
_____, 20_____.

Ballots counted for the following candidates:

Candidate	Votes Counted
_____	_____
_____	_____
_____	_____
_____	_____

Ballots counted for and against each ballot issue and ballot question as follows:

Ballot Question/Issue A: {INSERT BALLOT TITLE, NUMBER, AND BALLOT TEXT HERE}

Yes	No
_____	_____

Ballot Question/Issue B: { INSERT BALLOT TITLE, NUMBER, AND BALLOT TEXT HERE }

Yes	No
_____	_____

By:

_____, Designated Election Official _____ Date

_____, Canvasser _____ Date

_____, Canvasser _____ Date

PROCEDURAL INSTRUCTIONS: No later than 7 days after the election, the canvassers shall meet, survey the returns, issue a certified statement of results, and make out abstracts of votes for each office. The purpose of this canvass is to verify the returns. DO NOT RECOUNT BALLOTS!

RECOUNTS

Pursuant to CRS 1-10.5-101(b); 1-11-102 A recount is required if the difference between the highest number of votes cast in that election contest and the next highest number of votes cast in that election contest is less than or equal to one-half of one percent of the highest votes cast in that election contest. If there is more than one person to be elected in a contest, a recount shall be held if the difference between the votes cast for the candidate who won the election with the least votes and the candidate who lost the election with the most votes is less than or equal to one-half of one percent of the votes cast for the candidate who won the election with the least votes. Recount occurs ONLY after the canvass board has certified the original vote count.

EXAMPLE SCENARIOS

Scenario 1:

VOTE FOR ONE CANDIDATE:

Vote Totals From Judge's Abstracts

John Bailey	2000
Sally Fields	1900

Calculate the difference between the votes. $2000 - 1900 = 100$. Now set up your equation. $100 \leq .5\% \text{ of } 2000$. $100 \leq .5\% \times 2000 = 10$. Is 100 less than or equal to 10? No. A recount of votes is not required.

Scenario 2:

VOTE FOR NOT MORE THAN THREE CANDIDATES:

Vote Totals From Judge's Abstracts

Bart Simpson	124
Buffy Masterson	186
Sandra Bullock	92 (Candidate with lowest number of winning votes)
Eddie Murphy	90 (Candidate with highest number of losing votes)

Calculate the difference between the candidate with the lowest number of winning votes and the candidate with the highest number of losing votes. $92 - 90 = 2$. Now set up your equation. $2 \leq .5\% \times 92$. $2 \leq .5\% \times 92 = .46$ Is 2 equal to or less than .46? No. A recount of votes is not required.

From these examples, you can see that the numbers of votes cast would have to be considerable, and the margin of difference between the votes nominal, for the threat of a recount. Nonetheless, whenever a contest appears close, we recommend you do the calculations, to determine the need for a recount. Once it is determined that there is not a need for a recount, certify your election results to the division of local government.

**BOARD OF CANVASSERS
CERTIFICATE OF ELECTION RESULTS
FOR THE REGULAR ELECTION
HELD TUESDAY, MAY 6, 2008**

1-11-103 and 32-1-104(1), C.R.S.

_____DISTRICT
_____COUNTY, STATE OF COLORADO.

Each of the undersigned members of the board of canvassers of the _____
_____ District certifies that the following is a true and correct statement of the results of
the regular election for the above-named district, at which time the eligible electors of the district voted as indicated on the
attached Judges' Certificate of Election Returns, and as a result of which the eligible electors elected to office the
following Directors:

For Each Candidate Elected to Office:

Name	Address	Term
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

For Each Question/Issue Submitted: (ATTACH COPIES OF ALL BALLOT QUESTIONS/TEXT)

Number of votes for: _____

Number of votes against: _____

(Signed) _____
(designated election official)

(Signed) _____
(canvasser)

(Signed) _____
(canvasser)

(contact person for the district)

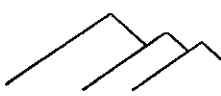
(business address)

(telephone number)

(facsimile)

(email address)

PROCEDURAL INSTRUCTIONS: Prepare and deliver a Certificate of Election to those candidates receiving the highest number of votes. Deposit 1 copy with the Clerk and Recorder of each county in which the special district is located. This certificate of election must be available for public inspection in the office of the Designated Election Official. Send 1 copy to: Division of Local Government, 1313 Sherman Street, Room 521, Denver, CO 80203. Provide a list of all current directors to the Division, including addresses, within 30 days after the election.



**Colorado Special Districts Property and Liability Pool
Comprehensive Crime Coverage Certificate**

Insured by the Fidelity and Deposit Insurance Co. of Maryland
Master Policy Number: CCP0037259

Certificate Number: 20C60277-1037

Coverage Period: 1/1/2007 Until Cancelled

Named Member:

Billing Period: 1/1/2007 to 1/1/2008

Thompson Crossing Metropolitan District No. 1
1739 S. Cty. Rd. 13C
Loveland, CO 80537

Agent of Record:

Herbert-Leavitt
Insurance Agency, Inc.
Longmont, CO 80501

Covered ERISA Plan:

Coverage, Limits of Insurance and Deductibles:

Limits:

FORM O, P - Public Employee Dishonesty Coverage:

\$5,000

- Faithful Performance of Duty.
- Non Compensated Officers, Directors and Trustees.
- Includes Welfare and Pension Plan ERISA Compliance.
if Covered Plan is shown on application.
- Limit is per Employee, (Form P.) unless Limit is \$100,000 or
greater and then Limit is per Loss (Form O).

FORM B - Forgery or Alteration Coverage:

\$5,000

FORM C - Theft, Disappearance and Destruction Coverage:

Primary \$5,000 deductible provided by Money and Securities
Section of the Pool's Property Coverage Document,
otherwise Crime deductible below will apply.

Section 1 - Inside Premises Deductible: \$5,000 **\$5,000**

Section 2 - Outside Premises Deductible: \$5,000 **\$5,000**

FORM F - Computer Fraud Coverage:

\$15,000 or Form O Limit, whichever is less.

Crime Deductible: \$100.00

Contribution: \$139.00

This certificate is made and is mutually accepted by the Pool and the Named Member subject to all terms which are made a part of the Master Comprehensive Crime Policy. This certificate represents only a brief summary of coverages. Please refer to the Master Policy Document for actual coverage terms that may apply to any specific situation.

Countersigned by: *Susan G. Wheeler*
Authorized Representative

Tuesday, December 26, 2006

Entity ID#: 60277

Director's List & District Contact Data Update for:

_____ District, County(ies) of _____, State of Colorado

PLEASE SEND BY MAIL OR FAX TO:

Terri L. Maulik
 District Election Specialist
 Division of Local Government
 1313 Sherman St., Rm 521
 Denver CO 80203
 Facsimile: 303-866-4819

<u>District Contact Update</u>	
District Name:	_____
District Contact Person:	_____
District Business Address:	_____ _____
District Telephone:	_____ Fax: _____
District Email:	_____@_____._____

Our board has: 5 or 7 members. (Circle one)

Director's Full Name (Please do not use nick names.)	Title (E.g. Chair, Treasurer)	Address	Elected or Appointed (E or A)	Current Term Expiration Year	Length of Term (1-4 yrs)	Oath on file with DLG (√)	Bond on file with DLG (√)

Submit this information to the division after each election, cancellation of election, change of your board (including vacancies and appointments), change in district contact data, and each year by January 15th.

Division of Local Government – Department of Local Affairs – Revised 11-29-07

_____ District Contact Signature Date

APPLICATION FOR EMERGENCY MAIL-IN BALLOT

1-8-115, C.R.S.

To the Designated Election Official of the _____ District:

I, _____, whose date of birth is _____,

am an eligible elector of the _____ District

in the County of _____, State of Colorado, and my residence address is: _____.

I desire to vote at the election to be held on Tuesday, May 6, 2008, and hereby apply to vote as an emergency mail-in voter.

I am applying for an emergency mail-in ballot because:

_____ I will be unable to attend the polls on Election Day due to confinement in a hospital or place of residence which occurred because of conditions arising after the last date to apply for a mail-in ballot.

OR

_____ I am unable to go to the polls on Election Day because of conditions arising after the last date to apply for mail-in ballots.

Please deliver an emergency mail-in voter ballot, for me, to the following authorized family member:

Printed name: _____

Address: _____

I hereby acknowledge receipt of the above ballot for delivery to the above named elector.

(This section is to be filled out by the authorized family member after he/she receives ballot.)

Printed name: _____

Signature: _____

Address: _____

VOTER SIGN HERE

DATE

IMPORTANT

This request must be made to the Designated Election Official no sooner than May 5th and no later than May 6th by 5:00 p.m. on Election Day. In order for your ballot to be counted the ballot must be in its completed, return envelope, and in the hands of the Designated Election Official, no later than 7:00 p.m. on Election Day.

Procedural Instructions: Be sure to confirm voter's eligibility against the poll book before giving their family member a ballot.

STATE OF COLORADO

APPLICATION FOR MAIL BALLOT BY AN INACTIVE VOTER



Voter Information: Required fields must be completed. (Please print)						
Last Name (Required)		First Name (Required)		Middle Name	Suffix (Jr., III)	Previous Name of Applicant – If Applicable
Colorado Legal Residence Street Address (Required – No P.O. Boxes)			Apt/Unit #	City/Town (Required)	Zip (Required)	County
Mailing Address or P.O. Box - Required if different from residential address			Apt/Unit #	City/Town	State	Zip
Date of Birth (Required) MM / DD / YYYY		Colorado Driver's License Number OR State Issued ID Number		Social Security Number (At Least the Last 4 Digits)		
Change of Residence: Has your residential address changed? <input type="checkbox"/> YES <input type="checkbox"/> NO If NO, skip this Change of Residence section.						
Previous Colorado Legal Residence Street Address			City/Town	State	Zip	
Will you have resided at your new address at least 30 days prior to the Election? <input type="checkbox"/> YES <input type="checkbox"/> NO			When did you move to your new address shown above? MM / DD / YYYY			
<p>I do solemnly affirm that I have resided in the State of Colorado at least thirty days and in my present precinct at least thirty days before the election. I further affirm that the present address I listed herein is my sole legal place of residence and I claim no other place as my legal residence.</p>						
Signature or Mark (Required)						
<div style="border: 1px solid black; height: 100px; width: 100%;"></div> <div style="font-size: 2em; font-weight: bold; margin-top: 10px;">X</div> <hr style="border: 0; border-top: 1px solid black; margin-top: 5px;"/> <p style="margin-top: 5px;">Signature (Required)</p>				<p>Date Signed (Required) _____</p> <p style="text-align: center; font-size: small;">MM DD YYYY</p>		
<p>Procedural Instructions: After an elector has completed the <i>Inactive Voter Application</i>, verify that they are still claiming residency in your district before giving them a ballot. Note the change of voter status on your registration lists and then forward this form to the appropriate county clerk and recorder. The clerk will update the elector from Inactive to Active voter status in their voter registration data base for future elections. Remember, these electors are already on your property owner's and/or county registration lists as "Inactive." This form makes the voter "Active" so that you may give the elector a ballot. Pursuant to SOS Rule 2.11, for the purposes of section 1-2-605(4)(A), CRS, An update to a voter's registration information must be provided to the county clerk and recorder in writing in order to change the voter's status from inactive to active. For the purposes of this rule, in writing shall include correspondence delivered in person, by US Mail, Fax, or Email.</p>						

{To be printed on district letterhead immediately after the final abstract of votes cast for each office has been prepared and certified.}

DATE

Candidate Name
Candidate Address
City, State, Zip

Re: Notice of election to office

Dear Mr. or Mrs. {Candidate's Last Name}:

In an election of the _____ district, held on May 6, 2008, in which you submitted a self-nomination and acceptance petition to run for director to the board, the votes cast were _____ in favor of your desire to be a director.

As required by CRS 1-11-103(1), I am notifying you of your election to office. Each director, within 30 days after his/her election to office, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law. CRS 32-1-901(1)

Pursuant to CRS 32-1-901(2) and CRS 32-1-902(2) at the time of filing said oath, there shall also be filed with the Division of Local Government, for each director, an individual, schedule, or blanket surety bond at the expense of the special district, in an amount determined by the board of not less than \$1,000 each, conditioned upon the faithful performance of hi duties as director. The treasurer shall file with the clerk of court, at the expense of the special district, a corporate fidelity bond in an amount determined by the board of not less than \$5,000, conditioned on the faithful performance of the duties of his office.

The current board of directors has made arrangements for all newly elected officials to appear and be sworn in on {INSERT DATE} at {INSERT TIME}. The swearing-in ceremony will be held publicly at {INSERT LOCATION NAME AND ADDRESS}.

Please contact {INSERT DEO NAME} at {INSERT DEO TELEPHONE NUMBER} if this is an inconvenience for you and we will make arrangements to have you sworn in at a more opportune time.

The {INSERT NAME OF SPECIAL DISTRICT} is pleased to have you join in our endeavors to create a transparent and honorable government body who are true stewards of the citizens they represent.

Sincerely,

{Signature}
{INSERT DEO NAME HERE}

[District Name]
Certificate of Election

*This is to certify that at the May 6, 2008 regular biennial special
district election*

[candidate's name here]
was duly elected as Board of Director.

Issued this _____ day of June, 2008

Insert District
Logo Here

Name and Title of DEO

[Company Name] Certificate of Completion

is hereby granted to:

[name here]

to certify that they have completed to satisfaction

[Course Name]

Granted: November 30, 2007



{name, title}