

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-1198.01 Bob Lackner x4350

SENATE BILL 17-305

SENATE SPONSORSHIP

Lundberg and Fenberg, Aguilar, Court, Guzman, Kagan, Merrifield, Neville T., Scott, Todd, Williams A.

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Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO SELECT STATUTORY PROVISIONS**
102 **AFFECTING PRIMARY ELECTIONS ENACTED BY VOTERS AT THE**
103 **2016 STATEWIDE GENERAL ELECTION TO FACILITATE THE**
104 **EFFECTIVE IMPLEMENTATION OF THE STATE'S ELECTION LAWS,**
105 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

At the 2016 general election, the voters of the state approved 2 initiated measures affecting primary elections: Proposition 107, which

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 9, 2017

HOUSE
Amended 2nd Reading
May 8, 2017

SENATE
Amended 3rd Reading
May 8, 2017

SENATE
Amended 2nd Reading
May 5, 2017

restored a presidential primary election, and Proposition 108, which allows participation by unaffiliated voters in primary elections.

The bill makes several modifications to some of the statutory provisions that were affected by Propositions 107 and 108 in the following respects for the purpose of facilitating the effective implementation of the state's election laws:

- ! **Section 1** of the bill adds to the list of questions that a prospective elector who is unaffiliated with a political party may answer prior to registering to vote by means of paper registration to include what political party, if any, whose primary election ballot the elector desires to receive in the mail.
- ! For a regular primary election, **section 2** requires the county clerk and recorder to send to all active electors in the county who have not declared an affiliation with a political party a mailing that contains the ballots of all the major political parties and eliminates the use of a single combined ballot for regular primary elections. If the elector requests the ballot of a particular political party, the bill requires the county clerk and recorder to record the elector's preference in the statewide voter registration system and to continue to mail the ballot of that political party to the elector in connection with all future primary elections until the elector indicates otherwise.
- ! **Section 3** requires the governor to consult the secretary of state (secretary) in selecting the date of the presidential primary election. This section requires, for a presidential primary election, the county clerk and recorder to send to all active electors in the county who have not declared an affiliation with a political party a mailing that contains the ballots of all the major political parties as with a regular primary election; authorizes the secretary to adopt by rule additional ballot requirements to avoid voter confusion in presidential primary elections; and repeals provisions requiring the state to reimburse the counties for expenses incurred in connection with the preparation and conduct of presidential primary elections in lieu of the provisions in section 6.
- ! **Section 4** moves the deadline by which a candidate in the presidential primary election is to submit to the secretary required filing materials to run in the primary election from the second day of January in the year of the primary election to 85 days before the date of the primary election. This section also requires challenges to the listing of a candidate on the presidential primary ballot to be filed with

the district court, as with other election challenges, and not the secretary.

! **Section 5** adds to the existing duties of the canvass board the duty to reconcile the ballots cast in a primary election for each political party to confirm that the number of ballots counted for a political party in that election does not exceed the number of ballots cast for that party.

! **Section 6** requires the general assembly to appropriate money from the state's general fund to cover the costs of the election incurred by the state arising from the preparation and conduct of a presidential primary election.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 1-2-204, **add** (2)(j.5)
3 as follows:

4 **1-2-204. Questions answered by elector - rules.** (2) In addition,
5 each elector shall correctly answer the following:

6 (j.5) IN THE CASE OF AN UNAFFILIATED ELECTOR, THE NAME OF THE
7 POLITICAL PARTY, IF ANY, WHOSE PRIMARY ELECTION BALLOT THE
8 ELECTOR DESIRES TO RECEIVE IN THE MAIL.

9 **SECTION 2.** In Colorado Revised Statutes, 1-4-101, **amend** (2)
10 introductory portion and (2)(a) as follows:

11 **1-4-101. Primary elections - when - nominations - expenses.**

12 (2) Each political party that is entitled to participate in the primary
13 election ~~shall~~ MUST have a separate party ballot for use by electors
14 affiliated with that political party. ~~In addition, all political parties that are~~
15 ~~entitled to participate in the primary election shall have their candidates~~
16 ~~placed on a single combined ballot to be used by unaffiliated electors that~~
17 ~~contains the names of the candidates of each of the political parties and~~
18 ~~that are clearly and conspicuously segregated from the names of the~~
19 ~~candidates of any other political party. All candidates of a political party~~

1 shall be grouped together and separated by the office each candidate is
2 seeking. Such ballots shall clearly advise that an elector may cast the
3 ballot of only one major political party and that any ballot in which votes
4 have been cast in the primary of more than one party shall be void and not
5 counted. However, An elector is not required to vote in the same party
6 primary as the elector voted in as part of a presidential primary election
7 occurring in that same year, if such an election is held;

8 (a) ~~If it is not practicable for a county to use a single combined~~
9 ~~ballot that contains the names of the candidates of each of the political~~
10 ~~parties,~~ The county clerk and recorder shall send to all active electors in
11 the county who have not declared an affiliation OR PROVIDED A BALLOT
12 PREFERENCE with a political party a mailing that contains the ballots of all
13 of the major political parties. In this mailing, the clerk shall also provide
14 written instructions advising the elector of the manner in which the
15 elector will be in compliance with the requirements of this code in
16 selecting and casting the ballot of a major political party. An elector may
17 cast the ballot of only one major political party. After selecting and
18 casting a ballot of a single major political party, the elector shall return
19 the ballot to the clerk. If an elector casts and returns to the clerk the ballot
20 of more than one major political party, all such ballots returned will be
21 void REJECTED and will not be counted.

22

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23 **SECTION 3.** In Colorado Revised Statutes, 1-4-1203, **amend** (1)
24 and (4)(b); **repeal** (7); and **add** (4)(c) and (4)(d) as follows:

25 **1-4-1203. Presidential primary elections - when - conduct.**

26 (1) A presidential primary election shall be held on a Tuesday on a date
27 designated by the governor. The date selected for the primary must be no

1 earlier than the date the national rules of the major political parties
2 provide for state delegations to the party's national convention to be
3 allocated without penalty and not later than the third Tuesday in March
4 in years in which a United States Presidential Election will be held. The
5 governor shall, IN CONSULTATION WITH THE SECRETARY OF STATE,
6 designate the date of the presidential primary election no later than the
7 first day of September in the year before the presidential primary election
8 will be held.

9 (4) (b) Each political party that is entitled to participate in the
10 presidential primary election shall have a separate party ballot for use by
11 electors affiliated with that political party. ~~in addition, all political parties
12 that are entitled to participate in the primary election shall have their
13 candidates placed on a single combined ballot to be used by unaffiliated
14 electors that contains the names of the candidates of each of the political
15 parties and that are clearly and conspicuously segregated from the names
16 of the candidates of any other political party. across the top of each such
17 ballot the words "primary election ballot for unaffiliated voters" shall be
18 printed and clearly advise that an elector may cast the ballot of only one
19 political party and that any ballot in which votes have been cast in the
20 primary of more than one party shall be void and not counted.~~

21 (c) THE COUNTY CLERK AND RECORDER SHALL SEND TO ALL
22 ACTIVE ELECTORS IN THE COUNTY WHO HAVE NOT DECLARED AN
23 AFFILIATION OR PROVIDED A BALLOT PREFERENCE WITH A POLITICAL
24 PARTY A BALLOT PACKET THAT CONTAINS THE BALLOTS OF ALL THE MAJOR
25 POLITICAL PARTIES. IN THIS BALLOT PACKET, THE CLERK SHALL ALSO
26 PROVIDE WRITTEN INSTRUCTIONS ADVISING THE ELECTOR OF THE MANNER
27 IN WHICH THE ELECTOR WILL BE IN COMPLIANCE WITH THE REQUIREMENTS

1 OF THIS CODE IN SELECTING AND CASTING THE BALLOT OF A MAJOR
2 POLITICAL PARTY. AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE
3 MAJOR POLITICAL PARTY. AFTER SELECTING AND CASTING A BALLOT OF A
4 SINGLE MAJOR POLITICAL PARTY, THE ELECTOR SHALL RETURN THE
5 BALLOT TO THE CLERK. IF AN ELECTOR CASTS AND RETURNS TO THE CLERK
6 THE BALLOT OF MORE THAN ONE MAJOR POLITICAL PARTY, ALL SUCH
7 BALLOTS RETURNED WILL BE REJECTED AND WILL NOT BE COUNTED.

8 (d) THE SECRETARY OF STATE MAY BY RULE ADOPT ADDITIONAL
9 BALLOT REQUIREMENTS NECESSARY TO AVOID VOTER CONFUSION IN
10 VOTING IN PRESIDENTIAL PRIMARY ELECTIONS.

11 ~~(7) The state shall reimburse the counties for all expenses incurred~~
12 ~~and shown to be directly attributable to the preparation and conduct of the~~
13 ~~presidential primary election in the same manner as the state reimburses~~
14 ~~counties for state ballot issues in section 1-5-505.5; except that the~~
15 ~~reimbursement must be based on the number of active registered electors~~
16 ~~participating in the presidential primary election as of the day of the~~
17 ~~presidential primary election. The general assembly shall make~~
18 ~~appropriations to the department of state from the department of state~~
19 ~~cash fund or from the general fund for the purpose of reimbursing~~
20 ~~counties under the terms of this section in conformity with section~~
21 ~~24-21-104.5.~~

22 **SECTION 4.** In Colorado Revised Statutes, 1-4-1204, **amend**
23 (1)(c) and (4) as follows:

24 **1-4-1204. Names on ballots.** (1) Not later than sixty days before
25 the presidential primary election, the secretary of state shall certify the
26 names and party affiliations of the candidates to be placed on any
27 presidential primary election ballots. The only candidates whose names

1 shall be placed on ballots for the election shall be those candidates who:

2 (c) Have submitted to the secretary, ~~by the second day of January~~
3 ~~in the year of the presidential primary election~~ NOT LATER THAN
4 EIGHTY-FIVE DAYS BEFORE THE DATE OF THE PRESIDENTIAL PRIMARY
5 ELECTION, a notarized candidate's statement of intent together with either
6 a nonrefundable filing fee of five hundred dollars or a petition signed by
7 at least five thousand eligible electors ~~of AFFILIATED WITH~~ the candidate's
8 political party who reside in the state. Candidate petitions must meet the
9 requirements of parts 8 and 9 of this ~~article~~ ARTICLE 4, as applicable.

10 (4) Any challenge to the listing of any candidate on the
11 presidential primary election ballot must be made in writing and filed
12 with the ~~secretary~~ DISTRICT COURT IN ACCORDANCE WITH SECTION 1-1-113
13 (1) no later than five days after the filing deadline for candidates. Any
14 such challenge must provide notice ~~in writing~~ in a summary manner of an
15 alleged impropriety that gives rise to the complaint. ~~The secretary shall~~
16 ~~address by rule other requirements of a valid challenge. In response to a~~
17 ~~valid challenge brought under this subsection (4), the secretary shall~~
18 ~~transmit notice of the challenge forthwith to all candidates appearing on~~
19 ~~the presidential primary ballot and to the state chairperson of each major~~
20 ~~political party. No later than five days after the challenge is filed, a~~
21 hearing must be held at which time the ~~secretary~~ DISTRICT COURT shall
22 hear the challenge and assess the validity of all alleged improprieties. The
23 ~~secretary~~ DISTRICT COURT shall issue findings of fact and conclusions of
24 law no later than forty-eight hours after the hearing. The party filing the
25 challenge has the burden to sustain the challenge by a preponderance of
26 the evidence. ~~The secretary of state's decisions upon matters of substance~~
27 ~~are open to review, if prompt application is made, as provided in section~~

1 ~~1-1-113~~ ANY ORDER ENTERED BY THE DISTRICT COURT MAY BE REVIEWED
2 IN ACCORDANCE WITH SECTION 1-1-113 (3).

3 **SECTION 5.** In Colorado Revised Statutes, 1-7.5-107, **amend**
4 (3)(a)(II); and **repeal** (2.5)(a)(II) as follows:

5 **1-7.5-107. Procedures for conducting mail ballot election -**
6 **primary elections - first-time voters casting a mail ballot after having**
7 **registered by mail to vote - in-person request for ballot -**
8 **repeal.** (2.5) (a) (II) For a primary mail ballot election, in addition to the
9 items described in the notice required by subparagraph (I) of this
10 paragraph (a), such notice shall advise eligible electors who are not
11 affiliated with a political party of the ability to vote in the primary
12 election of any political party. The notice must clearly and conspicuously
13 advise electors that any primary ballot containing votes for a candidate of
14 more than one political party shall not be counted.

15 (3)(a)(II) For a primary mail ballot election, the mail ballot packet
16 must be mailed only to those active registered electors, who are affiliated
17 with a political party that is participating in the election. If the
18 twenty-second day before an election is a Saturday, Sunday, or legal
19 holiday, the county clerk and recorder or designated election official may
20 mail ballot packets pursuant to subparagraph (I) of this paragraph (a) on
21 the Friday immediately preceding the twenty-second day.

22 **SECTION 6.** In Colorado Revised Statutes, 1-7.5-106.5, **amend**
23 (3) as follows:

24 **1-7.5-106.5. Registration record - list of mail ballots.** (3) The
25 county clerk and recorder or designated election official shall keep a list
26 of RECORD IN THE STATEWIDE VOTER REGISTRATION SYSTEM CREATED IN
27 SECTION 1-2-301 (1) THE names and precinct numbers of eligible electors,

1 together with the date on which the mail ballot was sent and the date on
2 which each mail ballot was returned or otherwise cast. FOR UNAFFILIATED
3 ELECTORS IN A PRIMARY ELECTION, THE COUNTY CLERK AND RECORDER
4 SHALL RECORD WHICH POLITICAL PARTY'S BALLOT THE ELECTOR CAST. If
5 a mail ballot is not returned or otherwise cast, or if it is rejected and not
6 counted, that fact shall be noted on the list MUST BE RECORDED IN THE
7 STATEWIDE VOTER REGISTRATION SYSTEM. The list is open INFORMATION
8 IS SUBJECT to public inspection under applicable laws and rules.

9 **SECTION 7.** In Colorado Revised Statutes, **amend** 24-21-104.5
10 as follows:

11 **24-21-104.5. General fund appropriation - cash fund**
12 **appropriation - elections - legislative intent.** (1) The general assembly
13 is authorized to appropriate ~~moneys~~ MONEY from the department of state
14 cash fund to the department of state to cover the costs of the local county
15 clerk and recorders relating to the conduct of presidential primary
16 elections, general elections, and November odd-year elections. If the
17 amount of ~~moneys~~ MONEY in the department of state cash fund is
18 insufficient to cover such costs, the general assembly may appropriate
19 additional general fund ~~moneys~~ MONEY to cover such costs after
20 exhausting all ~~moneys~~ MONEY in the department of state cash fund. The
21 intent of the general assembly is to authorize the appropriation of
22 department of state cash fund ~~moneys~~ MONEY and general fund ~~moneys~~
23 MONEY to the department of state to offset some of the costs of local
24 county clerk and recorders associated with the additional election duties
25 and requirements resulting from the preparation and conduct of
26 presidential primary elections and from the passage of section 20 of
27 article X of the state constitution and from the increased number of

1 initiatives that are being filed.

2 (2) FOR A PRESIDENTIAL PRIMARY ELECTION, AS DEFINED IN
3 SECTION 1-4-1202 (2), THE GENERAL ASSEMBLY SHALL APPROPRIATE
4 MONEY FROM THE GENERAL FUND TO COVER THE COSTS OF THE ELECTION
5 INCURRED BY THE STATE ARISING FROM THE PREPARATION AND CONDUCT
6 OF A PRESIDENTIAL PRIMARY ELECTION IN ACCORDANCE WITH PART 12 OF
7 ARTICLE 4 OF TITLE 1. IN ADDITION, BY MEANS OF AN APPROPRIATION
8 FROM THE GENERAL FUND, THE STATE SHALL ALSO REIMBURSE THE
9 COUNTIES FOR ALL OF THE ACTUAL DIRECT COSTS THEY INCUR ARISING
10 FROM THE PREPARATION AND CONDUCT OF SUCH ELECTION IN
11 ACCORDANCE WITH PART 12 OF ARTICLE 4 OF TITLE 1. BY RULE
12 PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE 24, THE
13 SECRETARY OF STATE SHALL DETERMINE THE TYPE OF ACTUAL DIRECT
14 COSTS FOR WHICH THE COUNTIES ARE ENTITLED TO REIMBURSEMENT
15 PURSUANT TO SECTION 1-4-1203 (5) AND THIS SUBSECTION (2).

16 **SECTION 8. Appropriation.** For the 2017-18 state fiscal year,
17 \$157,796 is appropriated to the department of state. This appropriation is
18 from the department of state cash fund created in section 24-21-104
19 (3)(b), C.R.S. To implement this act, the department may use this
20 appropriation for personal services related to information technology
21 services.

22 **SECTION 9. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 9, 2017, if adjournment sine die is on May 10,
26 2017); except that, if a referendum petition is filed pursuant to section 1
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2018 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

5 (2) This act applies to primary elections held on or after the
6 applicable effective date of this act.