

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

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.

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); and **add** (2)(d) 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 (d) IF THE ELECTOR REQUESTS THE BALLOT OF A PARTICULAR
23 POLITICAL PARTY, THE COUNTY CLERK AND RECORDER SHALL RECORD THE
24 ELECTOR'S PREFERENCE IN THE STATEWIDE VOTER REGISTRATION SYSTEM
25 CREATED IN SECTION 1-2-301 (1) AND SHALL CONTINUE TO MAIL THE
26 BALLOT OF THAT POLITICAL PARTY TO THE ELECTOR IN CONNECTION WITH
27 ALL FUTURE PRIMARY ELECTIONS UNTIL THE ELECTOR INDICATES

1 OTHERWISE.

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

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

5 (1) A presidential primary election shall be held on a Tuesday on a date
6 designated by the governor. The date selected for the primary must be no
7 earlier than the date the national rules of the major political parties
8 provide for state delegations to the party's national convention to be
9 allocated without penalty and not later than the third Tuesday in March
10 in years in which a United States Presidential Election will be held. The
11 governor shall, IN CONSULTATION WITH THE SECRETARY OF STATE,
12 designate the date of the presidential primary election no later than the
13 first day of September in the year before the presidential primary election
14 will be held.

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

27 (c) THE COUNTY CLERK AND RECORDER SHALL SEND TO ALL

1 ACTIVE ELECTORS IN THE COUNTY WHO HAVE NOT DECLARED AN
2 AFFILIATION OR PROVIDED A BALLOT PREFERENCE WITH A POLITICAL
3 PARTY A BALLOT PACKET THAT CONTAINS THE BALLOTS OF ALL THE MAJOR
4 POLITICAL PARTIES. IN THIS BALLOT PACKET, THE CLERK SHALL ALSO
5 PROVIDE WRITTEN INSTRUCTIONS ADVISING THE ELECTOR OF THE MANNER
6 IN WHICH THE ELECTOR WILL BE IN COMPLIANCE WITH THE REQUIREMENTS
7 OF THIS CODE IN SELECTING AND CASTING THE BALLOT OF A MAJOR
8 POLITICAL PARTY. AN ELECTOR MAY CAST THE BALLOT OF ONLY ONE
9 MAJOR POLITICAL PARTY. AFTER SELECTING AND CASTING A BALLOT OF A
10 SINGLE MAJOR POLITICAL PARTY, THE ELECTOR SHALL RETURN THE
11 BALLOT TO THE CLERK. IF AN ELECTOR CASTS AND RETURNS TO THE CLERK
12 THE BALLOT OF MORE THAN ONE MAJOR POLITICAL PARTY, ALL SUCH
13 BALLOTS RETURNED WILL BE REJECTED AND WILL NOT BE COUNTED.

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

17 ~~(7) The state shall reimburse the counties for all expenses incurred~~
18 ~~and shown to be directly attributable to the preparation and conduct of the~~
19 ~~presidential primary election in the same manner as the state reimburses~~
20 ~~counties for state ballot issues in section 1-5-505.5; except that the~~
21 ~~reimbursement must be based on the number of active registered electors~~
22 ~~participating in the presidential primary election as of the day of the~~
23 ~~presidential primary election. The general assembly shall make~~
24 ~~appropriations to the department of state from the department of state~~
25 ~~cash fund or from the general fund for the purpose of reimbursing~~
26 ~~counties under the terms of this section in conformity with section~~
27 ~~24-21-104.5.~~

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

3 **1-4-1204. Names on ballots.** (1) Not later than sixty days before
4 the presidential primary election, the secretary of state shall certify the
5 names and party affiliations of the candidates to be placed on any
6 presidential primary election ballots. The only candidates whose names
7 shall be placed on ballots for the election shall be those candidates who:

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

16 (4) Any challenge to the listing of any candidate on the
17 presidential primary election ballot must be made in writing and filed
18 with the ~~secretary~~ DISTRICT COURT IN ACCORDANCE WITH SECTION 1-1-113
19 (1) no later than five days after the filing deadline for candidates. Any
20 such challenge must provide notice ~~in writing~~ in a summary manner of an
21 alleged impropriety that gives rise to the complaint. ~~The secretary shall~~
22 ~~address by rule other requirements of a valid challenge. In response to a~~
23 ~~valid challenge brought under this subsection (4), the secretary shall~~
24 ~~transmit notice of the challenge forthwith to all candidates appearing on~~
25 ~~the presidential primary ballot and to the state chairperson of each major~~
26 ~~political party.~~ No later than five days after the challenge is filed, a
27 hearing must be held at which time the ~~secretary~~ DISTRICT COURT shall

1 hear the challenge and assess the validity of all alleged improprieties. The
2 ~~secretary~~ DISTRICT COURT shall issue findings of fact and conclusions of
3 law no later than forty-eight hours after the hearing. The party filing the
4 challenge has the burden to sustain the challenge by a preponderance of
5 the evidence. ~~The secretary of state's decisions upon matters of substance~~
6 ~~are open to review, if prompt application is made, as provided in section~~
7 ~~1-1-113~~ ANY ORDER ENTERED BY THE DISTRICT COURT MAY BE REVIEWED
8 IN ACCORDANCE WITH SECTION 1-1-113 (3).

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

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

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

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

3 **1-7.5-106.5. Registration record - list of mail ballots.** (3) The
4 county clerk and recorder or designated election official shall keep a list
5 of RECORD IN THE STATEWIDE VOTER REGISTRATION SYSTEM CREATED IN
6 SECTION 1-2-301 (1) THE names and precinct numbers of eligible electors,
7 together with the date on which the mail ballot was sent and the date on
8 which each mail ballot was returned or otherwise cast. FOR UNAFFILIATED
9 ELECTORS IN A PRIMARY ELECTION, THE COUNTY CLERK AND RECORDER
10 SHALL RECORD WHICH POLITICAL PARTY'S BALLOT THE ELECTOR CAST. If
11 a mail ballot is not returned or otherwise cast, or if it is rejected and not
12 counted, that fact shall be noted on the list MUST BE RECORDED IN THE
13 STATEWIDE VOTER REGISTRATION SYSTEM. The list is open INFORMATION
14 IS SUBJECT to public inspection under applicable laws and rules.

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

17 **24-21-104.5. General fund appropriation - cash fund**
18 **appropriation - elections - legislative intent.** (1) The general assembly
19 is authorized to appropriate ~~moneys~~ MONEY from the department of state
20 cash fund to the department of state to cover the costs of the local county
21 clerk and recorders relating to the conduct of presidential primary
22 elections, general elections, and November odd-year elections. If the
23 amount of ~~moneys~~ MONEY in the department of state cash fund is
24 insufficient to cover such costs, the general assembly may appropriate
25 additional general fund ~~moneys~~ MONEY to cover such costs after
26 exhausting all ~~moneys~~ MONEY in the department of state cash fund. The
27 intent of the general assembly is to authorize the appropriation of

1 department of state cash fund ~~moneys~~ MONEY and general fund ~~moneys~~
2 MONEY to the department of state to offset some of the costs of local
3 county clerk and recorders associated with the additional election duties
4 and requirements resulting from the preparation and conduct of
5 presidential primary elections and from the passage of section 20 of
6 article X of the state constitution and from the increased number of
7 initiatives that are being filed.

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

22 **SECTION 8. Appropriation.** (1) For the 2017-18 state fiscal
23 year, \$208,811 is appropriated to the department of state. This
24 appropriation is from the department of state cash fund created in section
25 24-21-104 (3)(b), C.R.S. To implement this act, the department may use
26 this appropriation as follows:

27 (a) \$180,456 for personal services for information technology

1 services; and

2 (b) \$28,355 for operating expenses for the elections division.

3 **SECTION 9. Act subject to petition - effective date -**
4 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
5 the expiration of the ninety-day period after final adjournment of the
6 general assembly (August 9, 2017, if adjournment sine die is on May 10,
7 2017); except that, if a referendum petition is filed pursuant to section 1
8 (3) of article V of the state constitution against this act or an item, section,
9 or part of this act within such period, then the act, item, section, or part
10 will not take effect unless approved by the people at the general election
11 to be held in November 2018 and, in such case, will take effect on the
12 date of the official declaration of the vote thereon by the governor.

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