

CHAPTER 259

**ELECTIONS**

**HOUSE BILL 09-1015**

BY REPRESENTATIVE(S) Murray, Marostica, Casso, Court, Kerr J., Labuda, Nikkel, Todd, Bradford, Priola, Ryden, Schafer S., Vigil;  
also SENATOR(S) Hodge, Bacon, Spence.

**AN ACT**

**CONCERNING CERTAIN ACTIONS TAKEN BY THE DESIGNATED ELECTION OFFICIAL IN CONDUCTING PRIMARY ELECTIONS, AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1.** 1-4-101 (1), Colorado Revised Statutes, is amended to read:

**1-4-101. Primary election nominations made.** (1) EXCEPT AS PROVIDED IN SECTION 1-4-104.5, 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.

**SECTION 2.** Part 1 of article 4 of title 1, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**1-4-104.5. Primary election canceled - when.** (1) IF, AT THE CLOSE OF BUSINESS ON THE SIXTIETH DAY BEFORE THE PRIMARY ELECTION, THERE IS NOT MORE THAN ONE CANDIDATE FOR ANY POLITICAL PARTY WHO HAS BEEN NOMINATED IN ACCORDANCE WITH THIS ARTICLE OR WHO HAS FILED A WRITE-IN CANDIDATE AFFIDAVIT OF INTENT PURSUANT TO SECTION 1-4-1101 FOR ANY OFFICE ON THE PRIMARY ELECTION BALLOT, THE DESIGNATED ELECTION OFFICIAL MAY CANCEL THE PRIMARY ELECTION AND DECLARE EACH CANDIDATE THE PARTY NOMINEE FOR THAT OFFICE AT THE GENERAL ELECTION. FOR PURPOSES OF OTHER APPLICABLE LAW, SUCH NOMINEE SHALL BE DEEMED A CANDIDATE IN AND THE WINNER OF THE PRIMARY ELECTION. THE NAME OF EACH NOMINEE SHALL BE PRINTED ON THE

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

OFFICIAL BALLOT PREPARED FOR THE ENSUING GENERAL ELECTION.

(2) IF A MAJOR POLITICAL PARTY HAS MORE THAN ONE CANDIDATE NOMINATED FOR ANY OFFICE ON THE PRIMARY ELECTION BALLOT, THE PRIMARY ELECTION SHALL BE CONDUCTED AS PROVIDED IN SECTION 1-4-101.

(3) IF, AT THE CLOSE OF BUSINESS ON THE SIXTIETH DAY BEFORE THE PRIMARY ELECTION, THERE IS NOT MORE THAN ONE CANDIDATE FOR EACH MAJOR POLITICAL PARTY WHO HAS BEEN NOMINATED IN ACCORDANCE WITH THIS ARTICLE FOR ANY OFFICE ON THE PRIMARY ELECTION BALLOT AND A MINOR POLITICAL PARTY HAS MORE THAN ONE CANDIDATE NOMINATED FOR ANY SUCH OFFICE, THE PRIMARY ELECTION SHALL BE CONDUCTED AS PROVIDED IN SECTION 1-4-101 FOR THE NOMINATION OF THE MINOR POLITICAL PARTY CANDIDATE ONLY.

**SECTION 3.** 1-7.5-103 (4), Colorado Revised Statutes, is amended to read:

**1-7.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(4) "Mail ballot election" means an election for which eligible electors may cast ballots by mail and in accordance with this article in A PRIMARY ELECTION OR an election that involves only nonpartisan candidates or ballot questions or ballot issues.

**SECTION 4.** 1-7.5-104 (2), Colorado Revised Statutes, is amended to read:

**1-7.5-104. Mail ballot elections - optional.** (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, EXCEPT FOR PRIMARY ELECTIONS;

(b) Elections held in conjunction with, or on the same day as, a primary or congressional vacancy election, UNLESS THE PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION.

**SECTION 5.** 1-7.5-105 (2), Colorado Revised Statutes, is amended, and the said 1-7.5-105 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**1-7.5-105. Preelection process.** (1.5) (a) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, IF A PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION PURSUANT TO THIS ARTICLE, THE DESIGNATED ELECTION OFFICIAL SHALL NOTIFY THE SECRETARY OF STATE NO LATER THAN ONE HUNDRED TWENTY 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.

(b) PRIOR TO MAKING A DETERMINATION TO CONDUCT A PRIMARY ELECTION AS A MAIL BALLOT ELECTION, A COUNTY CLERK AND RECORDER SHALL GIVE PUBLIC NOTICE AND SEEK PUBLIC COMMENT ON SUCH DETERMINATION. THE SECRETARY OF

STATE SHALL ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AS NEEDED TO IMPLEMENT THIS REQUIREMENT.

(2) (a) 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.

(b) IN THE CASE OF A PRIMARY ELECTION CONDUCTED AS A MAIL BALLOT ELECTION, THE SECRETARY OF STATE SHALL PROVIDE NOTICE ON ITS WEB SITE THAT A PRIMARY ELECTION IS TO BE CONDUCTED BY MAIL BALLOT.

**SECTION 6.** 1-7.5-107 (2.5) (a), (3) (a), and (3) (c), Colorado Revised Statutes, are amended, and the said 1-7.5-107 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**1-7.5-107. Procedures for conducting mail ballot election - primary elections - first-time voters casting a mail ballot after having registered by mail to vote.**

(2.3) (a) NOT LESS THAN THIRTY DAYS NOR MORE THAN FORTY-FIVE DAYS BEFORE A PRIMARY ELECTION THAT IS CONDUCTED AS A MAIL BALLOT ELECTION PURSUANT TO THIS ARTICLE, THE COUNTY CLERK AND RECORDER SHALL MAIL A NOTICE BY FORWARDABLE MAIL TO EACH UNAFFILIATED ACTIVE REGISTERED ELIGIBLE ELECTOR AND TO EACH UNAFFILIATED REGISTERED ELIGIBLE ELECTOR WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - FAILED TO VOTE".

(b) THE NOTICE SHALL INDICATE THAT THE UNAFFILIATED ELECTOR HAS THE ABILITY TO AND MUST AFFILIATE WITH A POLITICAL PARTY IN ORDER TO VOTE IN THE PRIMARY ELECTION.

(c) THE NOTICE SHALL HAVE A RETURNABLE PORTION THAT ALLOWS THE ELECTOR TO REQUEST AFFILIATION WITH A POLITICAL PARTY.

(d) THE NOTICE MAY BE INCLUDED WITH ANY OTHER COMMUNICATION BY MAIL FROM THE COUNTY CLERK AND RECORDER TO ELECTORS WITHIN THE COUNTY.

(2.5) (a) (I) 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).

(II) IF A PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION PURSUANT TO THIS ARTICLE, IN ADDITION TO THE ITEMS DESCRIBED IN THE NOTICE REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), SUCH NOTICE SHALL ADVISE ELIGIBLE ELECTORS WHO ARE NOT AFFILIATED WITH A POLITICAL PARTY OF THE ABILITY TO DECLARE AN AFFILIATION WITH A POLITICAL PARTY AND VOTE IN THE PRIMARY ELECTION.

(3) (a) (I) Not sooner than ~~twenty-five~~ TWENTY-TWO days before an election, and no later than ~~fifteen~~ EIGHTEEN days before an election, EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), 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. NOTHING IN THIS SUBSECTION (3) SHALL AFFECT ANY PROVISION OF THIS CODE GOVERNING THE DELIVERY OF MAIL BALLOTS TO AN ABSENT UNIFORMED SERVICES ELECTOR, NONRESIDENT OVERSEAS ELECTOR, OR RESIDENT OVERSEAS ELECTOR COVERED BY THE FEDERAL "UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT", 42 U.S.C. SEC. 1973ff ET SEQ.

(II) (A) IF A PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION PURSUANT TO THIS ARTICLE, IN ADDITION TO ACTIVE REGISTERED ELECTORS WHO ARE AFFILIATED WITH A POLITICAL PARTY, THE MAIL BALLOT PACKET SHALL BE MAILED TO EACH REGISTERED ELECTOR WHO IS AFFILIATED WITH A POLITICAL PARTY AND WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - FAILED TO VOTE".

(B) IF A PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION FOR A MINOR POLITICAL PARTY CANDIDATE, THE MAIL BALLOT PACKET SHALL BE MAILED ONLY TO THOSE REGISTERED ELECTORS DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) WHO ARE AFFILIATED WITH THE MINOR POLITICAL PARTY OF SUCH CANDIDATE.

(c) No sooner than ~~twenty-five~~ TWENTY-TWO days prior to election day, ~~not later than~~ AND UNTIL 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.

(4.3) (a) IF A PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION PURSUANT TO THIS ARTICLE, THERE SHALL BE A MINIMUM NUMBER OF MAIL BALLOT DROP-OFF LOCATIONS WHERE MAIL BALLOTS MAY BE DEPOSITED EQUAL TO AT LEAST ONE DROP-OFF LOCATION FOR EACH THIRTY THOUSAND AFFILIATED ACTIVE REGISTERED ELECTORS IN THE COUNTY. THE DROP-OFF LOCATIONS SHALL BE ARRAYED THROUGHOUT THE COUNTY IN A MANNER THAT PROVIDES THE GREATEST CONVENIENCE TO ELECTORS. THE NUMBER AND LOCATION OF THE DROP-OFF LOCATIONS SHALL BE APPROVED BY THE SECRETARY OF STATE AS PART OF THE MAIL BALLOT ELECTION PLAN REQUIRED PURSUANT TO SECTION 1-7.5-105.

(b) THE MINIMUM NUMBER OF DROP-OFF LOCATIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (4.3) SHALL ACCEPT MAIL BALLOTS DELIVERED BY ELECTORS DURING THE FOURTEEN DAYS PRIOR TO AND INCLUDING THE DAY OF THE PRIMARY ELECTION; EXCEPT THAT MAIL BALLOTS SHALL NOT BE REQUIRED TO BE ACCEPTED ON SUNDAYS OR THE FIRST SATURDAY OF SUCH PERIOD. MAIL BALLOTS

SHALL BE ACCEPTED FROM ELECTORS AT DROP-OFF LOCATIONS DURING, AT A MINIMUM, REASONABLE BUSINESS HOURS.

(4.5) (a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), IF A PRIMARY ELECTION IS CONDUCTED AS A MAIL BALLOT ELECTION PURSUANT TO THIS ARTICLE, THE COUNTY CLERK AND RECORDER SHALL DESIGNATE SERVICE CENTERS EQUAL TO NO FEWER THAN THE NUMBER OF COUNTY MOTOR VEHICLE OFFICES IN THE COUNTY; EXCEPT THAT EACH COUNTY SHALL HAVE NO FEWER THAN ONE SERVICE CENTER FOR EVERY SIXTY THOUSAND AFFILIATED ACTIVE REGISTERED ELECTORS. NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (4.5) TO THE CONTRARY, IF A COUNTY HAS FEWER THAN FIFTEEN THOUSAND AFFILIATED ACTIVE REGISTERED ELECTORS FOR EACH COUNTY MOTOR VEHICLE OFFICE IN THE COUNTY, THE COUNTY CLERK AND RECORDER SHALL DESIGNATE AT LEAST ONE SERVICE CENTER FOR EACH TWENTY-FIVE THOUSAND AFFILIATED ACTIVE REGISTERED ELECTORS.

(II) ANY COUNTY HAVING THIRTY THOUSAND OR FEWER AFFILIATED ACTIVE REGISTERED ELECTORS SHALL HAVE A MINIMUM OF ONE SERVICE CENTER, REGARDLESS OF THE NUMBER OF MOTOR VEHICLE OFFICES IN SUCH COUNTY.

(b) EACH SERVICE CENTER SHALL PROVIDE THE FOLLOWING FOR ELECTORS:

(I) THE ABILITY FOR UNAFFILIATED REGISTERED ELECTORS TO AFFILIATE WITH A POLITICAL PARTY AND CAST BALLOTS;

(II) SECURE COMPUTER ACCESS;

(III) FACILITIES AND EQUIPMENT THAT ARE COMPLIANT WITH THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AS AMENDED;

(IV) DIRECT RECORD ELECTRONIC VOTING MACHINES OR OTHER VOTING SYSTEMS ACCESSIBLE TO ELECTORS WITH DISABILITIES AS PROVIDED IN PART 7 OF ARTICLE 5 OF THIS TITLE;

(V) VOTING BOOTHS;

(VI) ORIGINAL AND REPLACEMENT BALLOTS FOR DISTRIBUTION;

(VII) THE ABILITY TO ACCEPT MAIL BALLOTS THAT ARE DEPOSITED BY ELECTORS;

(VIII) EMERGENCY VOTER REGISTRATION; AND

(IX) THE ABILITY TO CAST PROVISIONAL BALLOTS.

(c) SERVICE CENTERS SHALL BE OPEN DURING THE EIGHT DAYS PRIOR TO AND INCLUDING THE DAY OF THE PRIMARY ELECTION; EXCEPT THAT SERVICE CENTERS SHALL NOT BE REQUIRED TO BE OPEN ON SUNDAYS.

**SECTION 7. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created

in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2009, the sum of twenty-three thousand six hundred twenty-five dollars (\$23,625) cash funds, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 8. Act subject to petition - effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 15, 2009