

Legislative Council Staff

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Memorandum

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TO: Interested Persons

FROM: Amanda King, Senior Research Analyst, 303-866-4332

SUBJECT: Recalls and Vacancies

Summary

This memorandum provides an overview of the process to recall an office holder in Colorado and the various ways to fill a vacancy that occurs in an elected office at the federal, state, or local level in Colorado.

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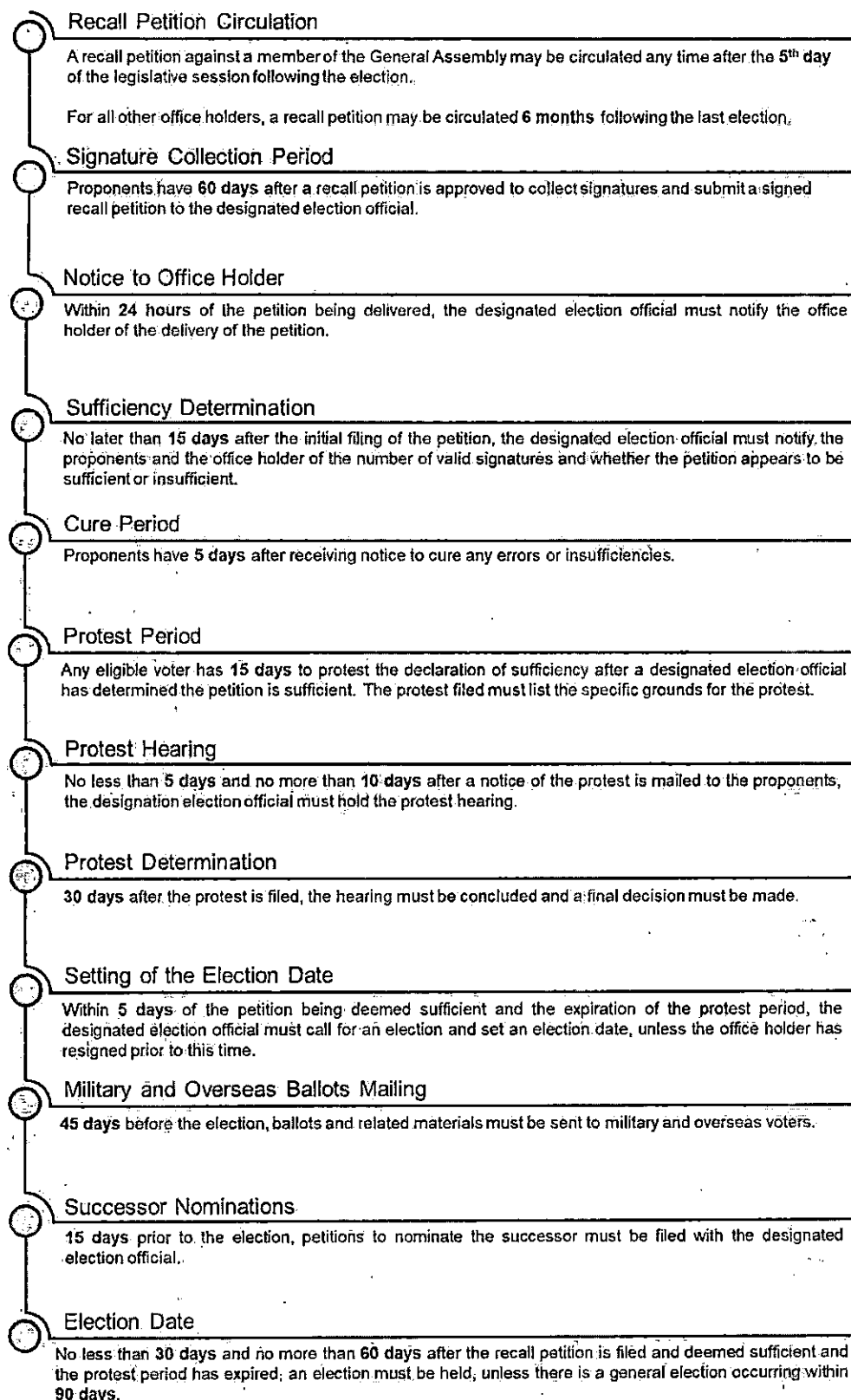
Recall Petitions

According to the National Conference of State Legislatures, Colorado is one of 19 states that allow voters to recall a state and local office holder.¹ Recall petition may not be circulated until an office holder has been in office for at least six months; except that members of the Colorado General Assembly can be recalled any time after the fifth day of the legislative session.² This section provides an overview of the process to recall an office holder in Colorado, a process that does not apply to U.S. Representatives or U.S. Senators elected by Colorado voters. Additionally, judges are not subject to recall in Colorado. Figure 1 provides a timeline of a recall effort.

¹Colo. Const. art. XXI.

²Section 1-12-102, C.R.S.

Figure 1 Recall Timeline



Source: Part 1 of Article 12 of Title 1, C.R.S.

Recall petitions. To start the recall process, the recall proponents must circulate a recall petition against an office holder that demands the election of a successor. The recall petition must include the name of the office holder whom the recall proponents are seeking to have recalled, his or her office, and up to 200 words describing the reason for the recall. The petition statement may not contain any false or profane statements. The recall proponents, petition signers, and voters determine the reasons for recalling an office holder. Other than signature requirements, state law does not contain criteria to recall an office holder or allow for a review of the grounds for recall.³ Recall petitions must be submitted to the appropriate designated election official (DEO) for approval, which could be the Secretary of State, county clerk and recorder, or another designated person depending on which office holder the recall proponents are attempting to recall.⁴ The DEO has seven business days to approve or disapprove a recall petition form.⁵

Recall petition signature verification. Recall proponents have 60 days from the approval of the petition form to collect signatures. The recall proponents must submit the signed recall petitions to DEO for signature verification. The DEO must notify the office holder who is the subject of the recall within 24 hours of delivery of the recall petition for verification. If the recall proponents collect a sufficient number of signatures from eligible voters, the DEO must certify the sufficiency of the petition and schedule a recall election. The number of signatures necessary to trigger a recall election varies by office as follows:

- for state and county officers, signatures equal to 25 percent of all votes cast for that office in the previous general election;
- for school district officers, signatures equal to 40 percent of ballots cast in the last election for that office; however, if there was no election at which the officer was elected,⁶ signatures must be collected from at least 10 percent of eligible voters residing in the district, except that no more than 15,000 signatures shall be required; and
- for nonpartisan elected officers, such as special district directors, signatures from 40 percent of the eligible voters in the district at the time that the petition is approved for circulation, or 300 signatures, whichever is less.⁷

If a recall petition is deemed to be insufficient, the DEO making this determination must notify the recall proponents, and the proponents have five days to cure any errors and insufficiencies described in the notice. If the DEO verifies the petition as insufficient, he or she must provide the specific reasons to the recall proponents. The DEO's determination can be appealed in district court in the county where the petition was filed.⁸

Protest. An eligible voter may protest the sufficiency of any verified petition by submitting a written statement under oath within 15 days of the declaration of sufficiency. The statement must include the grounds for protest, which can include failure of the recall proponent or the petition circulator to meet

³Section 1-12-103, C.R.S.

⁴Section 1-12-107, C.R.S.

⁵Section 1-12-108, C.R.S.

⁶Reasons for not holding an election could include a candidate running unopposed or that the number of candidates running is equal to the number of open seats for that elected offices, in which case the election is cancelled and the candidates are certified to the office.

⁷Sections 1-12-104, 1-12-105, and 1-12-106, C.R.S.

⁸Section 1-12-108, C.R.S.

requirements or misleading petition signers. If the DEO receives a protest, the DEO, his or her designee, or a district court judge, if the DEO is subject to recall, must hold a hearing no less than five days and no more than ten days after a notice of the protest is mailed to the recall proponents. At the hearing, the protesting party must prove the grounds for the protest by a preponderance of evidence. The hearing must conclude within 30 days after the protest filing and any decision is final and not subject to court review, except by the Colorado Supreme Court.⁹

Resignation and recall election. If the office holder subject to the recall does not resign within five days of the petition being deemed sufficient and the completion of the protest period, the designated official must call for an election and set a date for the election. A recall election must be held no less than 30 days and no more than 60 days after the recall petition is filed and deemed sufficient and the protest period has passed. However, if a general election is to be held within 90 days of this period, the recall election must be held as part of that election.¹⁰ Additionally, the “Uniform Military and Overseas Voters Act” requires that ballots and related materials be sent to military and overseas voters 45 days prior to the election.¹¹

If the office holder subject to recall resigns prior to the deadline for nominating successor candidates, the election must be cancelled, and the office is considered vacant and filled according to state law for that elected office, generally through the appointment of a successor.¹² Information about how elected office vacancies are filled can be found beginning on page 6 of this memorandum. If a resignation occurs after the nomination deadline, then the election must be held to elect a successor.

Recall Elections

Recall elections are held in the same manner as general elections and require a notice to voters informing them of the upcoming election, the creation of an election plan by the DEO, and the use of voter service and polling centers. At the recall election, voters must decide both whether to remove an office holder from office, and if so, which candidate will replace the office holder if the recall is successful. The office holder who is the subject of the recall may not be included on the ballot as a successor candidate. The office holder is removed from office and replaced by a successor if the majority of voters vote “yes” to recall the incumbent.¹³

Successor nomination. Petitions to nominate a successor to the office holder being recalled may be circulated beginning on the first day a recall protest can be filed and must be filed with the DEO no later than 15 days prior to the election. To get on the successor ballot, a candidate must collect the same number of signatures from eligible voters as required for that office. Table 1 shows these requirements.¹⁴ To be considered as a write-in candidate, an affidavit of intent must be filed with the designated office holder at least 15 days prior to the election.

⁹Section 1-12-108, C.R.S.

¹⁰Sections 1-12-109, 1-12-110, and 1-12-111, C.R.S.

¹¹Section 1-8.3-110, C.R.S.

¹²Section 1-12-201 *et seq.*, C.R.S.

¹³Sections 1-12-111.5, 1-12-114, and 1-12-118, C.R.S.

¹⁴Section 1-12-117, C.R.S.

Table 1
Petition Signature Requirements in State Law

Elected Office	Signatures Required for Major Party Candidates	Signatures Required for Minor Party and Unaffiliated Candidates
Governor	1,500 from each congressional district	1,000 from each congressional district
Secretary of State, State Treasurer, and Attorney General	1,000 from each congressional district	1,000 from each congressional district
State Board of Education, and Board of Regents of the University of Colorado	<i>District seats:</i> 1,500, or 10% of the votes cast in the last primary election for the same party and office, whichever is less <i>At-large candidate:</i> 500 from each congressional district	<i>District seats:</i> 1,500, or 2 1/2% of the votes cast in the last general election for all candidates for the office, whichever is less <i>At-large candidate:</i> 500 from each congressional district
Members of the General Assembly	1,000, or 30% of the votes cast in the last primary election for the same party and office, whichever is less	<i>State Senate:</i> The lesser of 1,000 or 3 1/3% of the votes cast in the Senate district in the most recent general election for the same office <i>State House:</i> The lesser of 1,000 or 5% of the votes cast for all candidates in the House district in the most recent general election for the same office
District Attorneys	1,000, or 10% of the votes cast in the last primary election for the same party and office, whichever is less	The lesser of 1,000 or 3% of the votes cast for all candidates in the district in the most recent general election
County Offices	1,000, or 10% of the votes cast in the last primary election for the same party and office. Additional requirements apply in counties that have recently voted to increase the number of county commissioners from three to five.	The lesser of 1,000 or 2% of votes cast for all candidates for the same office in the most recent general election

Source: Sections 1-4-801 and 1-4-802, C.R.S.

Recall ballots. Recall ballots include a question about whether the office holder should be recalled. The ballot also must include the list of candidates to succeed the office holder if the recall is successful, as well as a blank space where the voter can write the name of a write-in candidate who has filed a valid affidavit.

Additionally, the recall ballot must contain the statement from the recall proponents describing the reason for the recall that appeared on the petition. The office holder subject to the recall may submit an official statement to be included on the ballot, not to exceed 300 hundred words, justifying his or her conduct in office. The office holder statement may not include any profane or false statements.

The statement must be submitted no later than ten business days after the recall petition has been deemed sufficient and the protest period has expired.¹⁵

Subsequent recall limitations. Petitions for a subsequent recall of an office holder who was previously subject to a recall election, but not removed from office, may not be filed in the same term, unless the recall proponents obtain signatures equal to 50 percent of all votes cast for that office in the previous general election. For nonpartisan elected offices, a subsequent recall petition may not be filed unless the proponents of the recall obtain signatures equal to one and a half times the number of required signatures from the first recall petition. An office holder may not be recalled if his or her term is set to expire within six months.¹⁶

Recall election cost and reimbursements. The county clerk or local government conducting the recall election pays the recall election costs. Any political subdivision, such as a municipality, special district, or school district, that is using the county clerk to hold a recall election must reimburse the county clerk for reasonable expenses incurred.¹⁷

If the office holder subject to a recall election is not recalled, he or she may be reimbursed for expenses related to the recall election. State office holders who are subject to a recall election, but not recalled from office, may be reimbursed by the state in an amount not to exceed 10 cents per voter. County or local government office holders who are subject to a recall, but not recalled from office, may be reimbursed by the local governing body in an amount not to exceed 40 cents per voter or \$10,000. Authorized expenses may include costs to challenge the sufficiency of the recall petition and to justify his or her actions in office, which could include literature or advertising. Unauthorized expenses include court challenges, personal expenses such as meals and lodging, and campaign staff and associated costs.

In order to receive reimbursement, the office holder subject to recall must submit a detailed request to the governing body of the political subdivision holding the recall election. The request must be reviewed and forwarded with recommendations to the General Assembly for state recall election reimbursements or the treasurer of the appropriate governing body for other recall election reimbursements within 30 days of the request for reimbursement.¹⁸

Vacancies

A vacancy in an elected office may occur when an office holder resigns or dies during his or her elected term. Vacancies in federal, state, and local elected offices in Colorado are filled in a variety of ways, including appointments, vacancy elections, and political party vacancy committees. The appropriate central committee of a political party selects the vacancy committees. The rules or bylaws of each central committee determine the size and composition of vacancy committees, which can vary significantly.¹⁹ State law does not contain any requirements regarding the composition of the various

¹⁵Section 1-12-112, C.R.S.

¹⁶Section 1-12-102, C.R.S.

¹⁷Section 1-12-120.5, C.R.S.

¹⁸Section 1-12-120, C.R.S.

¹⁹Section 1-3-103, C.R.S.

vacancy committees. Table 2 shows the various methods for filling a vacancy, which are discussed in more detail below.

Table 2
How Various Elected Office Vacancies are Filled

Elected Office	Method to Fill a Vacancy
U.S. Senator	Governor appointment
U.S. Representative	Special election
Colorado General Assembly	Vacancy committee appointment
Colorado Governor	Vacancy is filled by Lieutenant Governor
Colorado Lieutenant Governor	Governor appointment
State and District Offices	Governor appointment
County Offices	Board of County Commissioners appointment
Board of County Commissioners	Vacancy committee or Governor appointment
Municipal Offices	Council appointment or election
Nonpartisan Offices - School Board	School board member appointment
Nonpartisan Offices - Special District	Special district director appointment

U.S. Senator. When there is a vacancy in the office of U.S. Senator, the Governor is required to make an appointment to fill the position temporarily until the next regularly scheduled general election. The winner of the election replaces the temporary appointee and serves for the remainder of the unexpired term of office for that Senate seat, if any. If the next regularly scheduled general election is when the Senate seat would have been up for election prior to becoming vacant, then the winner of that election serves a full six-year term.²⁰

U.S. Representative. When there is a vacancy in the U.S. House of Representatives, federal law requires that the office be filled by a special vacancy election. Accordingly, Colorado law specifies that in the event of a vacancy, the Governor must set a date to hold a vacancy election, except that no vacancy election may be held within the 90 days preceding a general election.²¹

Colorado General Assembly. When there is a vacancy in the office of State Senator or State Representative, state law requires that a vacancy committee be formed in that district by the political party to which the elected member belonged prior to vacating the office. A vacancy committee must provide notice of the time and location of its meeting to the members of the committee at least ten days prior to the meeting. The vacancy committee members present appoint a new legislator by a majority vote. The newly appointed legislator serves until the next general election.

A vacancy committee must certify the appointment with the Secretary of State within 30 days of when the vacancy occurred, or 30 days from the general election if the vacancy occurred between the time mail ballots are sent to voters and the general election. If the vacancy committee fails to appoint a new legislator to the vacant seat, the Governor must appoint someone within five days. The appointee must be certified by the Secretary of State no sooner than two days after the appointment and sworn

²⁰Section 1-12-201, C.R.S.

²¹Section 1-12-202, C.R.S.

into office within 30 days of receiving the certification or on the first day of the legislative session, whichever is first. In the event that the appointee does not take the oath of office within this required timeframe, the office is deemed vacant and filled again through the same process.

For vacancies caused by the resignation of the member of the General Assembly, the effective date for the vacancy is the date the resignation letter is submitted. If the resignation letter identifies a resignation date that occurs after the submittal of the letter, the vacancy committee may not meet more than 20 days prior to the resignation date, and the certification of an appointee may not occur before the resignation date. For vacancies caused by the death of a member of the General Assembly who has yet to be sworn in, the vacancy committee must meet within 30 days after the death of the member. The certification of the appointee can occur before the next legislative session, but does not take effect until the first day of the session.²²

Governor and Lieutenant Governor. When there is a vacancy in the Office of Governor, the Lieutenant Governor assumes the Office of Governor for the remainder of the term. When there is a vacancy in the Office of Lieutenant Governor, the Governor may appoint a successor, who must be confirmed by both chambers of the General Assembly. In the event of simultaneous vacancies in both offices, the order of succession for Governor then proceeds to the first officer in the following list who is a member of the same political party as the Governor:

- President of the Colorado Senate;
- Speaker of the Colorado House of Representatives;
- Minority Leader of the Colorado Senate; and
- Minority Leader of the Colorado House of Representatives.

In the event that none of the listed members of legislative leadership is affiliated with the same party as the Governor, the order of succession returns to the start of the list without regard to political party.²³

Other statewide offices and district attorneys. When there is a vacancy in the Office of the Attorney General, State Treasurer, or Secretary of State or a district attorney, the Governor must fill the vacancy by appointment until the next regularly scheduled general election. The State Senate must approve appointments to these offices.²⁴

County offices. The board of county commissioners makes appointments to fill vacancies in all county offices, other than members of the board of county commissioners. This includes the offices of County Sheriff, Coroner, Treasurer, Clerk and Recorder, Assessor, and Surveyor. The appropriate political party vacancy committees appoints the replacement when there is a board of county commissioner vacancy. The vacancy committee must fill the vacancy within ten days of when it occurred; however, written notice of the time and location of the vacancy committee meeting must be sent to each vacancy committee member at least six days prior to the meeting. If a vacancy committee fails to fill the vacancy within ten days, the Governor must appoint someone within 15 days. A minor

²²Section 1-12-203, C.R.S.

²³Colo. Const. art. IV, § 13.

²⁴Section 1-12-204, C.R.S.

political party must appoint a successor in accordance with its party bylaws in a vacancy for a county commissioner affiliated with a minor political party. The Governor appoints a replacement to fill a vacancy if a county commissioner was unaffiliated.²⁵

Municipal offices. Municipal elected offices include a City or Town Mayor, Clerk, Treasurer, and the council. Municipal elected office vacancies may be filled either by appointment with a majority vote of the council required or by election. If the council fails to make an appointment or order an election within 60 days after the vacancy occurs, an election must be ordered as soon as practicable. The appointee or candidate elected to the vacant municipal office serves until a successor is elected at the next regularly scheduled election.²⁶

Nonpartisan offices. Vacancies on nonpartisan boards, such as school boards and special district boards, are appointed by the remaining board members or special district directors. In the event there are no board members remaining or no person is appointed, the board of county commissioners in which the district is organized appoints a new board.²⁷

²⁵Sections 1-12-205 and 1-12-206, C.R.S.

²⁶Sections 31-4-106 and 31-4-108, C.R.S.

²⁷Section 1-12-207, C.R.S.