

ELECTIONS

Election Reform

HB 09-1335 (Enacted)
Requirements for Voting Equipment

HB 09-1336 (Enacted)
Recommendations of Election Reform
Commission

HB 09-1337 (Enacted)
Changes to Ballot Processing
Deadlines

HB 09-1015 (Enacted)
Conduct of Primary Elections

HJR 09-1015 (Postponed Indefinitely)
Interim Committee to Study Administration
Elections and Secretary of State

Campaign Finance

HB 09-1153 (Enacted)
Formation of Issue Committees Fair
Campaign Practices Act

HB 09-1357 (Enacted)
Filing Campaign Finance Reports with
Secretary of State

SB 09-083 (Postponed Indefinitely)
Limits Public Resources Political
Process

Electoral Processes

HB 09-1205 (Enacted)
Voting by Overseas Armed Forces

HCR 09-1005 (Postponed Indefinitely)
Independent Redistricting Commission
General Assembly Congress

Initiatives and Referred Measures

HB 09-1326 (Enacted)
Integrity of Citizen-Initiated Petitions

HB 09-1069 (Postponed indefinitely)
Withdrawal of an Initiative Petition

HB 09-1140 (Postponed Indefinitely)
Clarify Initiative and Referendum
Process

HB 09-1158 (Postponed Indefinitely)
Initiative Petition Withdrawal

Mail-In Ballots

HB 09-1186 (Enacted)
Contents and Delivery of Mail Ballots

HB 09-1216 (Enacted)
Election Code Revision Regarding
Voting by Electors

SB 09-087 (Enacted)
Special Districts Accountability

Vacancies in Office

SB 09-152 (Postponed Indefinitely)
Fill U.S. Senator Vacancies by
Election

Voter Registration and Identification

HB 09-1018 (Enacted)
SCORE System and HAVA
Compliance

HB 09-1160 (Enacted)
Secure Electronic Voter Information

HB 09-1115 (Postponed Indefinitely)
Define ID for Voting

HB 09-1146 (Postponed Indefinitely)
Proof of Citizenship to Register to
Vote

During the 2009 legislative session, the General Assembly considered a number of measures pertaining to elections, on issues ranging from election reform to campaign finance to the initiative process. In recent years, election-related issues have received a great deal of attention from the legislature, due in part to the decertification of certain voting equipment by the Secretary of State in December 2007, problems experienced at certain polling places in

Colorado during the 2006 election, and problems experienced nationwide during the 2000 and 2004 general elections. These developments moved the General Assembly to create the Election Reform Commission in 2008 for the purpose of deliberating on issues related to Colorado's elections system and making legislative recommendations. A summary of the legislation considered by the General Assembly pertaining to elections follows, grouped by subject area.

Election Reform

The 11-member Election Reform Commission was created by Senate Bill 08-243 with a mission to "review, research, and make recommendations to ensure that every eligible citizen has the opportunity to register to vote, participate in fair, accessible, and impartial elections, and have the assurance that his or her vote will count." In March 2009, the commission issued a report outlining a series of legislative recommendations. The General Assembly subsequently passed a package of three bills based on the commission's recommendations: House Bills 09-1335, 09-1336, and 09-1337.

House Bill 09-1335 transitions Colorado to a paper-based voting system by the 2014 general election.

Voting system use and purchase. The bill states the General Assembly's intention to:

- require any voting system purchased by a political subdivision between May 15, 2009, and the 2014 general election to be paper-based;
- suspend acquisition of electronic voting systems in order to assess existing and emerging voting technologies; and
- discourage investment by political subdivisions before the 2014 general election in technologies that will frustrate the intent of the General Assembly.

The bill allows political subdivisions to continue to use existing electronic voting devices and related components that were used during the 2008 general election as long as the equipment is used in accordance with conditions of use under which it was certified for the 2008 election, or in accordance with alternate conditions established by the Secretary of State (secretary). Going forward, the bill requires prior approval of the secretary to purchase new electronic voting equipment. To make such a purchase, the bill requires a political subdivision to submit a written application to the secretary, which the secretary must approve or deny within three business days after receipt. In reviewing the application and making a determination regarding the purchase, the secretary is required to prevent political subdivisions from investing in technologies that will frustrate the intent of the General Assembly, and in doing so must consider relevant factors including:

- whether the purchase replaces damaged equipment or accommodates a population increase;
- whether the purchase requires a new contract; and

- a comparison of the purchase with the political subdivision's annual capital expenditures on elections, in order to discourage a technology investment with a limited useful life.

The bill requires the secretary to promulgate rules regarding the purchase of electronic voting systems. The bill also allows the secretary to require by rule that voting equipment satisfy voting systems standards promulgated by the Federal Election Commission after January 1, 2008, so long as the standards meet or exceed the commission's 2002 standards.

Under previous law, political subdivisions seeking to modify previously certified electronic and electromechanical voting systems were required to have the modification certified by the secretary. House Bill 09-1335 requires the secretary to make a preliminary examination of a proposed modification, and either approve the modification or conduct a further review of the modification based on the likelihood of the modification causing adverse effects.

Voter-verifiable paper record. Previous law required voting systems used in elections on or after January 1, 2010, to be able to produce a voter-verifiable paper record of each vote. House Bill 09-1335 grants political subdivisions that have not complied with this requirement by January 1, 2009, until January 1, 2014, to comply with the requirement.

Voting system certification and testing. The bill requires the secretary to certify qualifying electronic and electromechanical voting systems, establish standards for certification, and approve the purchase, installation, and use of the systems by political subdivisions. Under the new provisions, the secretary may establish conditions of use for these voting systems by political subdivisions to correct deficiencies identified during certification. In undertaking electronic and electromechanical voting system certification, the bill allows the secretary to:

- consider procedures used or adopted by county clerks or best practices recommended by equipment vendors;
- request a federally accredited laboratory to undertake system testing;
- use and rely upon system testing already performed by another state or a federally accredited laboratory, conditioned upon the secretary and public having access to information relied upon for the testing, and the secretary determining that the testing was conducted in accordance with appropriate engineering standards and satisfies system requirements and standards under current state law; and
- conduct joint testing with an agency of another state or a federally accredited laboratory.

It also extends the deadline by which the secretary must decide whether to certify an electronic or electromechanical voting system from 90 to 180 days after submission of the system for certification.

Voting system auditing. The bill states the legislature's intent to move the state toward an election auditing process developed with the assistance of statistical experts and relying on risk-limiting audits.

Under the new requirements, counties must use a risk-limiting audit following each primary, general, coordinated, or Congressional vacancy election, starting with the 2014 general election. The bill requires the secretary to establish procedures for selecting races to be audited, and makes all contested races eligible for selection. Upon written application, the secretary may waive these risk-based auditing requirements if a county shows that the technology it uses will not enable the county to satisfy the requirements in preparation for the 2014 general election.

Prior to the 2010 primary election, the bill requires the secretary to establish a pilot program in selected counties to test the procedures and technical requirements necessary for conducting a risk-limiting audit. It requires the secretary to work with equipment vendors to identify technical modifications to election equipment that may be necessary to support risk-limited auditing. The secretary is also required by the bill to draw upon the experiences of the pilot program in making future recommendations for modifications to state law. Finally, House Bill 09-1335 requires the secretary to promulgate rules to implement and administer the risk-based auditing requirements, in consultation with statistical experts, equipment vendors, and county clerks.

House Bill 09-1336 implements various recommendations made by the Election Reform Commission. Specifically, the bill:

- defines "group residential facility," and exempts a resident of such a facility from showing identification at a polling place upon verification that the voter is a resident of the facility. The bill also requires the Secretary of State to promulgate rules as necessary to determine the identity of such a resident, and ensure the consistent application of this determination;
- increases from five to seven the number of mail-in ballots that, when sent to a group residential facility, require a committee consisting of an employee of the county clerk and, where available, a representative of each of the major parties to deliver and pick up the ballots;
- requires the Secretary of State to determine and consider best practices in the design and development of election forms in order to minimize voter confusion and maximize ease of use. The bill also requires the Secretary of State to promulgate rules as necessary to specify what constitutes approved and acceptable forms, and to establish uniformity in the use of forms;
- allows election officials to begin counting mail ballots 15 days prior to an election, up from 10 days;
- extends the current signature verification deadline for ballots received from absent overseas military voters to accommodate their receipt by the close of business on the eighth day following the election;

- requires canvass boards to reconcile ballots cast in each county precinct to confirm that the number of ballots cast does not exceed the number of registered voters in a precinct;
- states that a majority of the members of a canvass board is sufficient to certify an abstract of votes from an election and, when the board is unable to certify the abstract, requires the board to transmit the noncertified abstract to the Secretary of State along with a report detailing the reason for noncertification;
- requires the Secretary of State to promulgate rules establishing equitable uniformity in the appointment and operation of canvass boards; and
- requires a designated election official to notify new or reregistered mail-in voters who registered by mail and subsequently voted if the returned ballot did not contain a copy of identification as required by law. The bill allows for a copy of such identification to be forwarded within eight days after the election, thus allowing the ballot to be counted.

House Bill 09-1337 changes the time period within which a county clerk must send notice of signature deficiency to a voter from two days after the election to three days after the deficiency has been confirmed, but no later than two days after the election. It requires that mail-in ballots and other materials be delivered to voters no sooner than 25 days before every odd-year, Congressional vacancy, primary, and general election. The bill also allows election officials to begin counting mail-in ballots 15 days prior to an election. A designated election official is required to notify new or re-registered voters in a mail ballot election who registered by mail and subsequently voted if the returned ballot did not contain a copy of identification as required by law. The bill allows for a copy of such identification to be forwarded within eight days after the election, thus allowing the ballot to be counted.

Although it was introduced prior to the Election Reform Commission releasing its legislative recommendations, **House Bill 09-1015** enacts one of the commission's recommendations pertaining to cancellation of an uncontested primary election. The bill allows a designated election official to cancel an uncontested primary election and declare the sole candidate to be the party nominee for the specified office in the general election. To qualify, the primary must be uncontested as of 60 days before the election. The money saved as the result of a primary's cancellation must be held in reserve by a county for use in conducting future elections.

The bill also allows primary elections to be conducted as mail ballot elections, subject to the following requirements:

- designated election officials must notify the Secretary of State of the mail ballot primary election at least 120 days before the election, and must forward a plan for conducting the election;
- prior to making a determination to conduct a mail ballot primary election, a county clerk must give public notice and seek public comment on the determination;

- the Secretary of State must post notice of a primary election conducted by mail ballot on its web site;
- a county clerk and recorder conducting a primary election by mail ballot must mail a notice by forwardable mail to each unaffiliated active registered eligible voter and each unaffiliated registered eligible voter whose registration has been marked "inactive - failed to vote" for failure to vote in a general election. The notice must inform the unaffiliated voter of the need to affiliate with a political party in order to vote in the primary election, and must include a returnable portion allowing the voter to request a party affiliation. The bill also requires current notice requirements of mail ballot elections by publication to include notice to unaffiliated voters of the ability to affiliate with a political party and vote in a pending mail ballot primary election;
- a mail ballot packet must be mailed to each active registered voter affiliated with a political party, including those whose registration records have been marked "inactive - failed to vote";
- there must be at least one drop-off location for mail ballots in each county for each multiple of 30,000 affiliated active registered voters, and the drop-off locations must be arrayed throughout the county in a manner that provides the greatest convenience to the voters. The number and location of these drop-off locations must be approved by the Secretary of State;
- drop-off locations must be open to accept ballots during reasonable business hours for the 14 days prior to and including primary election day, excluding Sundays or the first Saturday of the period; and
- a county clerk and recorder must designate service centers equal to at least the number of county motor vehicle offices in the county, with no fewer than one service center for each 60,000 active registered voters. If the county has fewer than 15,000 affiliated active registered voters per motor vehicle office, the bill requires at least one service center for each 25,000 affiliated active registered voters. If a county has 30,000 or fewer active registered voters, the bill requires the county to have at least one service center.

House Bill 09-1015 requires certain amenities to be included in each service center used for mail ballot primary elections, and requires the service centers to be open during the eight days prior to and including the election, except for Sundays.

For all mail ballot elections, the bill changes the time period within which a mail ballot packet must be mailed to each active registered voter. It does not affect delivery of mail ballots to overseas voters covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act" (UOCAVA).

House Joint Resolution 09-1015, which was postponed indefinitely, would have created an eight-member interim legislative committee to study the administration of elections in the state and the feasibility and desirability of eliminating the office of Secretary of State

and transferring its election-related functions to a nonpartisan election commission, while transferring the office's other functions to other executive departments. The resolution established the specific issues to be considered by the committee.

Campaign Finance

House Bill 09-1153 exempts issue committees from registering with election officials until they accept or make contributions of more than \$200 to support or oppose any ballot issue or ballot question. The registration must occur within ten calendar days of the contribution transaction. Previous law required issue committees to register before accepting or making contributions. The bill establishes a set of criteria to determine when a matter is to be considered a ballot issue or ballot question, thereby necessitating compliance with campaign disclosure and reporting requirements by issue committees. Municipal annexations are not considered ballot issues or questions until notice of the annexation election has been published. The bill requires such notice to inform the public that issue committees are required by law to register with election officials within ten calendar days of making contributions or expenditures of at least \$200 to support or oppose the annexation question.

House Bill 09-1357 requires certain campaign finance reports that were filed with county clerk and recorders under prior law to instead be filed with the Secretary of State. The filing requirement applies to candidates and committees in special district elections, and any other candidates or committees unless otherwise specified by law. The bill requires applicable data filed with or under the control of county clerk and recorders to be transferred to the Secretary of State. It also requires each county clerk and recorder to maintain a copy of any required campaign finance report or statement filed with his or her office for a period of one year or, for candidates who are elected, for one year after the candidate leaves public office. Under the bill, campaign finance filings for municipal elections will continue to be filed with municipal clerks. House Bill 09-1357 removes from law a requirement that county clerk and recorders be reimbursed by the state to help defray the cost of implementing campaign finance law.

Senate Bill 09-083, which was postponed indefinitely, would have expanded restrictions on the use of public resources to participate in political campaigns. The bill prohibited the direct or indirect use of public resources to discuss or comment on campaigns for public office or ballot issues. The bill allowed elected officials or public entities to respond to written questions regarding such campaigns or issues, but only to the persons posing the questions. The bill also prohibited using public resources to analyze or research campaigns for office, ballot issues, or campaign questions during certain periods during an election cycle, or to distribute or disseminate such expressions. Elected officials were to retain the right to express personal opinions under the bill, so long as the expression does not involve the use of public employees.

Those found in violation of the bill's prohibitions would have been required to fully reimburse the governmental fund from which moneys were diverted to participate in the prohibited activities. In addition, the bill imposed a civil fine equal to the amount of reimbursement, to be paid into the state General Fund. The bill also contained several

provisions seeking to maintain a low threshold for the public to file complaints based on the bill's prohibitions.

Electoral Processes

In response to difficulties with voting experienced by some military personnel stationed overseas, **House Bill 09-1205** creates a voting pilot program similar to one established in Okaloosa County, Florida. The bill requires the Secretary of State, in coordination with county clerk and recorders, to develop an Internet-based voting pilot program to facilitate voting by military personnel serving outside the United States, starting with the 2012 general election. The bill requires the Secretary of State to select one or more political subdivisions to participate in the pilot program and specifies that the system used to implement the pilot program must:

- transmit encrypted information over a secure network;
- securely identify and authenticate information transmitted on the system, as well as local election officials and electronic equipment used by the Secretary of State and local officials in the conduct of elections via the Internet;
- protect the privacy, anonymity, and integrity of each voter's ballot;
- prevent a voter from casting multiple ballots over the Internet in an election;
- protect against abuse, including tampering, fraudulent use, and illegal manipulation by electors, election officials, or other individuals or groups; and
- provide uninterrupted Internet availability for the purpose of casting votes on-line by voters.

The bill requires local election officials participating in the pilot program to:

- assure that each voter participating in the pilot program is eligible and registered to vote;
- verify the identity of participating voters logging in to vote;
- verify the privacy and security of votes transmitted over the Internet, and verify that the votes have not been viewed or altered during transmission;
- verify the timeliness of the votes cast over the Internet; and
- verify that all votes cast through the pilot program were counted and correctly attributed to the voter who cast the vote.

Additional provisions in the bill allow overseas military personnel to:

- register to vote by emergency registration after discharge from active duty within 29 days prior to an election if the voter is a resident of Colorado, moved to a new county after close of the registration books, and will not cast a vote in another county or state;
- receive a mail-in ballot electronically if the voter timely filed a mail-in ballot application or has been placed on the permanent mail-in voter list, and requested receipt of the ballot electronically; and
- have mail-in ballots counted if cast and received by local election officials within deadlines established by House Bill 09-1205.

To fund the pilot program, the bill creates the Internet-based Voting Pilot Program Fund, consisting of public and private gifts, grants, and donations. The Department of State may implement the pilot program voting system only if sufficient moneys are obtained to cover the costs of implementation.

House Concurrent Resolution 09-1005, which was postponed indefinitely, would have placed on the ballot for the next election a constitutional amendment to replace the current Reapportionment Commission with the Independent Redistricting Commission. The amendment would have required the commission to redistrict the General Assembly and Congressional districts. Currently, the Reapportionment Commission is responsible for redistricting the General Assembly, and the General Assembly is responsible for redistricting Congressional districts. Under the resolution, the membership of the Independent Redistricting Commission would have been reduced to 9 members from the Reapportionment Commission's 11, consisting of the following appointments:

- 4 members appointed by the General Assembly;
- 2 members appointed by the Governor; and
- 3 members appointed by the commission's six other members from a pool of 28 persons nominated by the Supreme Court Nominating Commission, of which 10 would have been from each of the two largest political parties and the remaining 8 were required by the resolution to have been unaffiliated for the previous three years and have voted in the previous two general elections.

The resolution would have changed the requirements for serving on the Independent Redistricting Commission from the current service requirements for the Reapportionment Commission as follows:

- prohibiting members of the General Assembly from service, whereas 4 legislative members can currently serve on the Reapportionment Commission;
- reducing from 6 to 3 the number of commission members who may be affiliated with the same political party, while limiting the number of commission members who may be unaffiliated to 3; and

- making the current requirement that one commission member be from each of the state's Congressional districts contingent upon Colorado having nine or fewer districts.

The resolution also would have reduced the allowable population deviation for legislative districts from five percent to one percent.

Initiatives and Referred Measures

In light of the convening of a Joint Select Committee on Constitutional Reforms during the 2008 legislative session to consider issues associated with the initiative and referendum process, and the subsequent failure of Referendum O during the 2008 general election, Colorado's initiative and referendum process continued to be a focus of discussion during the 2009 legislative session.

House Bill 09-1326 made changes in several areas of the citizen-initiated petition process. Those changes are outlined below, by category.

Ballot and petition information. House Bill 09-1326 requires certain information to appear on statewide ballots and petition forms for statewide ballot issues. Specifically, the bill requires:

- ballots to identify a ballot issue proposing a change to the state constitution as an "amendment," and a ballot issue proposing a change to statutes as a "proposition." The bill also requires the current explanation appearing at the top of each ballot to explain the difference between an amendment and a proposition;
- initiated amendments to appear first on ballots, followed by referred amendments, initiated propositions, and referred propositions. The order of local ballot questions remains the same. The bill strikes a requirement to order ballot measures within each category by type;
- a change in the numbering for statewide measures on the ballot to differentiate between initiated and referred measures, with further differentiation between constitutional amendments and changes to statute;
- a ballot title appearing on the ballot to be preceded by an indication of whether the ballot issue changes the state constitution or statutes, along with the measure's assigned numbers or letters; and
- the statement at the top of each page of an initiative petition to contain a statement that signing the petition indicates support for including the proposed change to either the state constitution or statutes on the ballot, and that a sufficient number of signatures will result in the issue appearing on the ballot.

Initiative deadlines. House Bill 09-1326 makes the following deadline changes with respect to initiatives:

- the date for the last possible title board meeting prior to an election is moved to the third Wednesday in April, one month earlier than under prior law;
- a ballot petition, along with any signature addendums, must be filed with the Secretary of State at least three weeks earlier than under previous law, or at least three months and three weeks prior to the election; and
- a request for withdrawal of an initiative petition must be filed with the Secretary of State no later than 60 days prior to the election, up from 33 days.

Signature withdrawal. House Bill 09-1326 allows a voter who has signed an initiative petition to withdraw the signature by filing a written request with the Secretary of State on or before the day the petition is filed with the secretary. Once a petition has been deemed sufficient, the bill requires the Secretary of State to make the petition available to the public for copying. The bill makes it illegal to pay a voter to withdraw his or her name from a petition.

Petition circulation affidavit and notarization. The bill makes the following changes to the requirements for notarizing the affidavit attached to petition sections required to be signed by petition circulators:

- requires a petition circulator to be in the physical presence of a notary public when notarizing the affidavit;
- requires the circulator to date the affidavit and provide required personal information before notarization; and
- requires the circulator to present identification to the notary public before notarization, which the notary must note on the affidavit.

House Bill 09-1326 invalidates affidavits that are notarized in violation of the notarization requirements, or if the dates signed by a circulator and a notary public on an affidavit are different, and forbids the Secretary of State from accepting affidavits not in compliance with these requirements. The bill criminalizes certifying an affidavit in violation of these notarization requirements. Signing, as a circulator, an affidavit for a petition section containing signatures not affixed in the circulator's presence, and circulation of a petition section by a person other than the person who signed that section's affidavit are also crimes under the legislation. The fine for violating these and other provisions of initiative and referendum law is increased from \$500 to \$1,500.

Petition circulator training. House Bill 09-1326 requires the Secretary of State to develop training for paid and volunteer petition circulators, which must be conducted in the broadest, most cost-effective manner available. Petition proponents or petition entity representatives are required by the bill to inform petition circulators of training opportunities.

Petition circulator compensation. The bill makes it unlawful for a person to pay a petition circulator more than 20 percent of his or her compensation for circulation on a per signature or petition section basis.

Petition entity licensing. The bill requires a petition entity, defined as an entity that provides compensation for ballot petition circulation, to acquire a license from the Secretary of State. The following are grounds for denial of a license by the Secretary of State:

- the secretary finding that the petition entity or a principal has been found in a judicial or administrative proceeding to have violated certain petition laws of Colorado or another state;
- the petition entity failing to agree not to pay more than 20 percent of a circulator's compensation on a per signature or petition basis; and
- no current representative of the petition entity having completed the Secretary of State's circulator training.

The bill requires the Secretary of State to issue a decision on an application for a new or reinstated license within 10 business days after filing. The Secretary of State is required to revoke a petition license if a petition entity falls out of compliance with these requirements, or authorizes or knowingly permits certain proscribed activities. The bill sets the license revocation period for initial violations at 90 to 180 days, and the period for subsequent violations at 180 days to one year. House Bill 09-1326 also allows a petition entity to apply for reinstatement of a revoked license upon expiration of the term of revocation, and allows the Secretary of State to consider certain factors in making a reinstatement determination. The bill requires the secretary to charge a fee for the petition license. Licensed petition entities are also required to register with the Secretary of State by providing the ballot titles of measures for which petitions will be circulated by the entity, along with the entity's address, contact, and designated agent information.

In a hearing to determine if a petition entity compensated circulators without a license, the bill allows the Secretary of State to use at the hearing any information to which it may reasonably gain access, including the petition entity's required filings. If such a hearing determines a petition entity to have committed a violation, the fine is set by the Secretary of State in an amount not to exceed \$100 per circulator for each day of petition circulation on behalf of the unlicensed entity.

Petition circulators reporting. The bill requires proponents of a petition, or an issue committee acting on the proponents' behalf, to maintain a list of the names and addresses of circulators who circulated the petition and notaries public who notarized petition sections, along with petition section numbers associated with the circulators and notaries. A copy of the list must be filed with the Secretary of State along with the petition, and the list becomes a public document. If the list is not filed, the bill requires the Secretary of State to prepare the list and charge the proponents a fee. It also changes reporting requirements to election officials by petition proponents to require reporting of dates of petition circulation by paid circulators, and the total number of hours paid circulators spent circulating petitions.

Protest of petition sufficiency. House Bill 09-1326 establishes that a district court has jurisdiction to consider a protest challenging the Secretary of State's determination of a petition's sufficiency without further agency action. The bill states that grounds for challenging signature sufficiency include fraud, the use of a noncompliant petition form, and

violations of laws that prevent fraud, abuse, or mistakes in the petition process. The bill allows a district court to consider all signatures in a random sample if a protest is limited to an allegation of defects in the Secretary of State's statement of sufficiency based on a random sample. The bill also allows the pursuit of attorney fees and costs by the complainant if the district court determines fraud committed by a person involved in petition circulation resulted in invalid signatures or petition sections. Petition entries made on petition sections that substantially comply with the provisions of law are to be deemed valid by the Secretary of State or a court unless fraud or a violation of law pertaining to petitions is established by a preponderance of the evidence, or a circulator used an invalid petition form. A complainant or a defendant must be awarded attorney fees and costs if a protest or defense is determined to have lacked substantial justification.

Under the bill, a petition circulator is required to be available for deposition and testimony as part of a court proceeding or hearing conducted by the Secretary of State related to the protest of a petition section. A protested petition section is invalidated if the circulator fails to make himself or herself available as required, and the protest includes an allegation of circulator fraud regarding:

- forgery of a voter's signature;
- circulation of a petition section by someone other than the circulator who signed the petition section; or
- payment to a person to induce the person to sign the petition.

These factors do not invalidate petition sections if a district court or the Secretary of State finds that the circulator is unable to be deposed or to testify due to death, mental incompetence, or medical incapacity.

Initiative petition withdrawal. **House Bill 09-1069**, which was postponed indefinitely, would have prohibited a person or organization, directly or indirectly, from giving or offering consideration, or from receiving or accepting consideration, to withdraw an initiative petition from the ballot. The bill would have made these offenses class 6 felonies. **House Bill 09-1158**, which was also postponed indefinitely, would have moved the deadline for withdrawing an initiative petition from consideration as a ballot issue from 33 days prior to the election to 60 days prior to the election. The bill prohibited the Secretary of State from certifying to county clerk and recorders ballot issues that are withdrawn. The bill also prohibited publication of withdrawn initiatives on ballots, in the ballot information booklet ("blue book"), or in newspapers. Elements of House Bill 09-1158 were incorporated into House Bill 09-1326.

Elements of another bill that was postponed indefinitely, **House Bill 09-1140**, were also incorporated into House Bill 09-1326. The bill would have required certain information to appear on statewide ballots, on petition forms for statewide ballot issues, and in the ballot information booklet ("blue book"). Specifically, the bill would have required:

- ballots to identify a ballot issue proposing a change to the state constitution as an "amendment," and a ballot issue proposing a change to statutes as a "proposition."

The bill also would have required the current explanation appearing at the top of each ballot to explain the difference between an amendment and a proposition;

- a ballot title appearing on the ballot to be preceded by a statement indicating whether the ballot issue changes the state constitution or statutes, and including the short title used to summarize the ballot issue in the blue book;
- the statement at the top of each page of an initiative petition to contain a statement that signing the petition indicates support for including the proposed change to either the state constitution or statutes on the ballot, and that a sufficient number of signatures will result in the issue appearing on the ballot;
- the Director of Research of Legislative Council to finalize and provide to the Secretary of State each ballot issue short title 60 days prior to the election, while prohibiting modification of a short title once it is forwarded; and
- requests for withdrawal of an initiative petition to be filed with the Secretary of State no later than 60 days prior to the election. This prevents withdrawn ballot issues from appearing on the ballot.

Mail-In Ballots

House Bill 09-1186 allows a mail-in voter to drop off his or her mail ballot on election day at any polling place in the county in which the voter is registered to vote. Under the bill, mail-in voters are still allowed to drop off mail-in ballots at early polling places during the early voting period, as provided in current law. The bill also increases from five to ten the number of mail-in ballots that a person may mail or deliver on behalf of other voters.

House Bill 09-1216 makes a number of changes to conform to the implementation of the Statewide Colorado Voter Registration and Elections (SCORE) system and permanent mail-in voting. The bill requires county clerks to mail a notice for verification of an active voter's address to those active voters whose mail-in ballots have been returned as undeliverable, and to mark those who fail to respond as inactive, thus conforming the law to the current practice with mail ballots. It also requires county clerks who receive verification that the voter whose mail or mail-in ballot was returned as undeliverable lives in a different county to forward the address information to the county clerk of the new resident county. The bill removes the need to affirm an address on the self-affirmation portion of return envelopes for mail and mail-in ballots, and allows applications for mail-in ballots to be filed earlier than January 1 preceding an election.

House Bill 09-1216 clarifies that an unaffiliated voter may participate in a primary election upon openly declaring an affiliation to the election judge. It further allows those who have been issued a mail-in ballot to vote at a polling place or vote center by provisional ballot by affirming under oath that the mail-in ballot will not be cast. Finally, the bill conforms treatment of ballots for permanent mail-in voters by county clerks to current practices associated with absentee ballots.

Senate Bill 09-087 concerns increased accountability requirements for special districts. One of its provisions requires a designated election official of a metropolitan district, when the board of directors of the district is conducting an election, to mail a mail-in ballot to each eligible voter on a list of voters who have applied for permanent mail-in voter status. The bill requires the designated election official to coordinate with the clerk and recorder of the county or counties in which the district is situated to acquire this list at least 60 days prior to the election. These requirements are placed only on metropolitan districts that collect revenue above a specific threshold.

The bill further requires a board of directors of a special district to provide notice annually to eligible voters that includes certain information about the district, including information about its elections and applying for permanent mail-in voter status.

Vacancies in Office

Senate Bill 09-152, which was postponed indefinitely, would have required a vacancy in the office of United States Senator to be filled by a vacancy election. Such vacancies are currently filled by gubernatorial appointment.

Voter Registration and Identification

The General Assembly considered legislation pertaining to the implementation of the Statewide Colorado Voter Registration and Elections System (SCORE). The system was implemented by the Department of State to comply with the federal Help America Vote Act (HAVA), and serves as a centralized voter registration and elections management system, moving away from a system managed at the county level. **House Bill 09-1018** removes obsolete statutory language based on implementation of SCORE, in compliance with the HAVA. Specifically, the bill eliminates instructions for transmitting voter information to the Secretary of State by county clerk and recorders, since such information is now entered directly into the SCORE system rather than being maintained in separate county databases. The bill contains new instructions for transferring voter registration records between counties when a voter registers to vote in another county, based on the types of information provided by the voter. It also contains new instructions to county clerk and recorders for cancelling older registrations of voters who are registered multiple times, based on use of the SCORE system.

House Bill 09-1160 allows a person to register to vote by completing a form on the Secretary of State's web site if the person's signature is stored in digital form by the Department of State, or is accessible to the department via the SCORE system database or certain databases maintained by the Department of Revenue. The bill also allows a registered voter to change his or her residence on the registration record, change or withdraw an affiliation, apply for permanent mail-in ballot status, or make a change to an existing mail-in ballot status by completing a form on the Secretary of State's website.

House Bill 09-1160 requires the form for registering to vote on-line to contain certain information pertaining to the registrant's eligibility to vote, as well as a self-affirmation that

the registrant is qualified to register. In addition, the bill incorporates current requirements for making changes to residential information, affiliation, and mail-in ballot status into the on-line forms for doing so, and requires submission of a birth date and the last four digits of the voter's social security number to make these changes. Under the bill, a county clerk and recorder must verify the electronic signature of an individual registering to vote online, and when changes are made to a registered elector's residence information, affiliation, and mail-in ballot status. For address changes, the bill requires the county clerk and recorder to send a nonforwardable postcard to the old address giving notice of the change of address and requesting the voter to contact the clerk and recorder if the voter does not wish to change the address.

On-line voter registrations and changes are applicable to an election if performed at least 29 days before the election. The bill requires the Secretary of State to make the electronic forms available to the public on its website by April 1, 2010.

Identification requirements for voting and voter registration continued to be a topic of consideration in the General Assembly. **House Bill 09-1115**, which was postponed indefinitely, would have required voters to present photo identification for election-related purposes. In doing so, the bill eliminated several forms of identification currently allowed for such purposes that do not include a photograph of the voter. Also postponed indefinitely was **House Bill 09-1146**, which would have required a person applying to register to vote to provide proof of citizenship and specified the documentation allowed to establish proof. The bill exempted persons from the proof of citizenship requirement under certain circumstances.