

ELECTIONS

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Miscellaneous Elections Issues

HB 10-1116 (Enacted)
Revisions to Colorado Election Law

HB 10-1206 (Postponed Indefinitely)
Voting Rights Students CSU System

HCR 10-1006 (Postponed Indefinitely)
Voter Approval for Tax Policy Changes

SB 10-179 (Postponed Indefinitely)
Voting Rights Persons in Criminal Justice System

During the 2010 legislative session, the General Assembly considered a number of measures pertaining to elections, on issues ranging from campaign finance to the initiative process to congressional redistricting and reapportionment. 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. Several of the commission's recommendations were adopted in 2009, but elections continue to be a high priority of the General Assembly. A summary of the legislation considered by the General Assembly in 2010 pertaining to elections follows.

Ballot Access

House Bill 10-1271 shortens the period for which a person seeking nomination as a candidate for political office must be affiliated with a political party, or unaffiliated for a person reaching the ballot by petition as an unaffiliated candidate. Under the bill, a candidate must show party affiliation, or no affiliation for unaffiliated petition candidates, no later than the first business day of January of the election year. Under previous law, unaffiliated candidates were required to show no affiliation for at least 12 months prior to the last day for filing nominating petitions. Because nominating petitions must be filed at least 140 days before the general election, the total required disaffiliation period amounted to about 17 months. Previously, party candidates were required to show affiliation for at least 12 months before the assembly at which candidates are designated for primary elections, unless otherwise provided for by party rules. HB 10-1271 allows parties to retain the ability to set affiliation periods through party rules. Both major political parties have established rules allowing for shorter affiliation periods. The bill's applicability begins with the 2012 general election.

House Bill 10-1077, which was postponed indefinitely, would have allowed for so-called "fusion voting" in elections for federal and state partisan political offices. Fusion voting allows a candidate for office to be the nominee of more than one political party. To facilitate fusion voting, the bill would have:

- allowed a candidate nominated by more than one party to appear on the ballot on each party's ballot line;
- required the ballot to include language indicating that a candidate had been nominated by multiple parties, but that a voter may only vote for the candidate once. In situations where a voter votes for the candidate more than once, the bill required that the vote be counted only once and not be attributed to any party in the abstract of votes;
- allowed a minor party candidate who had been defeated in the primary election of another party for the same office to remain on the ballot for the minor party for the general election; and
- allowed a minor political party to waive candidate affiliation requirements for a candidate seeking nomination to the party through petition.

Campaign Finance

The 2010 U.S. Supreme Court decision in *Citizens United v. Federal Elections Commission* overturned a portion of the federal 2002 Bipartisan Campaign Reform Act pertaining to independent expenditures. Independent expenditures are those election advocacy expenditures not controlled by or coordinated with a candidate or a candidate's agent. The decision, which held that corporate spending on independent political broadcasts prior to candidate elections cannot be restrained, caused states to re-examine their campaign finance laws. In response to the decision, **Senate Bill 10-203** makes changes to state law regulating independent expenditures made in connection with state elections. To this end, the bill:

- redefines "foreign corporation" and prohibits such entities from making independent expenditures associated with state elections. Under the bill, "foreign corporation" as the definition was known under previous law is now termed "nondomestic corporation." The definition of foreign corporation now includes corporations for which a foreign person or persons hold more than 50 percent of the corporation's ownership or positions on its board of directors;
- affirms that corporations and labor organizations are not prohibited from making independent expenditures, while requiring that such expenditures be disclosed in accordance with existing campaign finance law;
- requires persons and entities accepting donations for the purpose of making an independent expenditure or who make independent expenditures to register certain information with the Secretary of State or municipal clerk once such donations or expenditures reach \$1,000 in the aggregate. Such registration is required within two business days of reaching the \$1,000 threshold;
- triggers certain disclosure requirements to the Secretary of State or municipal clerk for aggregated independent expenditures of \$1,000 or more in a calendar year. Such disclosure requirements include disclosing information pertaining to persons making donations of \$250 or more to the person making the independent expenditure;
- for independent expenditures of more than \$1,000 made to fund a broadcast, printed, mailed, or otherwise circulated communication, requires the communication to state who paid for the communication and identify a registered agent for entities that are not natural persons;
- requires persons making independent expenditures in excess of \$1,000 in the aggregate during a calendar year to provide written notice within a specified time period to the Secretary of State or municipal clerk listing the candidate that the expenditure is intended to support or oppose;
- requires persons accepting donations of at least \$1,000 for the purpose of making an independent expenditure or who make an independent expenditure of at least \$1,000 in a calendar year to establish a separate account with a financial institution for the deposit

or withdrawal of moneys associated with the independent expenditure. The bill also restricts discovery related to the account holders and donors when a complaint is filed related to the account;

- conforms disclosure for independent expenditures to current requirements governing the deadlines for making disclosures to the appropriate authority;
- requires the Secretary of State to annually forward to the Department of Revenue independent expenditure donation reports in order to determine if the donors deducted any of the expenditures from their state income tax liability;
- clarifies that the requirements of the act pertaining to independent expenditures that apply to corporations also apply to labor organizations;
- establishes a range of penalties for failure to satisfy the bill's reporting requirements for independent expenditures. In situations where a fine of up to \$1,000 per day is levied on an entity with shareholders or members, the bill requires the violator to notify its shareholders or members of the infractions and penalties on its website; and
- extends to donations made for the purpose of making independent expenditures current law forbidding the state or any of its political subdivisions from making contributions to campaigns for public office. The bill further forbids the state and any political subdivision from spending any money for the purpose of urging voters to vote in favor of or against any ballot issue, referred measure, or recall issue. Previously, this restriction only applied to public money.

In situations where a person purchases advertising time through an independent expenditure that is not compliant with the act's provisions, the act provides immunity from civil liability for a media outlet if the media outlet withdraws the advertising time or voids the advertising contract.

House Joint Resolution 10-1011 requested the Colorado Supreme Court to render its opinion on a set of interrogatories submitted by the Governor pertaining to the *Citizens United* decision and its potential impact on Article XXVIII of the Colorado Constitution. This article addresses campaign and political finance, and in particular independent expenditures and electioneering communications. The Colorado Supreme Court responded to the interrogatories on March 22, 2010, ruling that the state's prohibition on the use of corporate or labor union funds to pay for independent expenditures or electioneering communications is unconstitutional under the *Citizens United* decision.

Senate Bill 10-041 makes the following technical changes to campaign finance law:

- conforms registration requirements for issue committees involved with recall elections to registration requirements for other types of issue committees;
- extends the amount of time allowed to correct an incomplete campaign finance filing from 7 to 15 business days;
- allows the Secretary of State to require filing of campaign finance documents through electronic means;

- clarifies procedures regarding the notice of disqualification sent to candidates barred from seeking office for failure to file certain documents; and
- changes the deadline for filing personal financial disclosure statements by certain public officials after their election, appointment, or retention.

House Bill 10-1156, which was postponed indefinitely, would have created a new system of partial public financing of campaigns for the General Assembly. Under the bill, funding for the voluntary financing would have come from voluntary contributions made through a contribution line on the Colorado's individual income tax return form. The bill created the Public Election Fund (fund), into which donations, grants, civil penalties, and appropriations were to be deposited for use in financing the campaigns of certified candidates for the General Assembly, and paying administrative, implementation, and enforcement costs associated with such public financing of campaigns.

To become certified, and thus eligible for public campaign funding under the bill, a candidate would have been required to collect contributions of at least \$5, up to the lawful contribution limit, from at least 0.1 percent of the residents of the district in which the candidate is seeking office. Subject to available funding, the Secretary of State would have been required by HB 10-1156 to make a one-time payment from the fund to the candidate committee of a certified candidate seeking payment in the following amounts:

- for state Senate candidates, \$2 from the fund for every \$1 raised in qualifying contributions, up to a maximum payment of \$10,000 from the fund;
- for state House of Representative candidates, \$2 from the fund for every \$1 raised in qualifying contributions, up to a maximum payment of \$5,000.

The bill required the candidate committee to spend the money within the applicable election cycle, and only to support the candidate's election. If the fund contained insufficient moneys to provide payment to all certified candidates in an election cycle, the bill required available moneys to be distributed to the candidates proportionately.

HB 10-1156 contained provisions outlining the circumstances under which the Secretary of State could revoke the certification of a candidate, the process for appealing a determination of the secretary, and certain other duties of the secretary. The bill also contained a range of penalties for breaching voluntary campaign spending limits, frivolously appealing a determination by the Secretary of State, exchanging compensation for a qualifying contribution, or providing false information in seeking certification.

House Bill 10-1272, which was also postponed indefinitely, would have set limits on campaign contributions to candidates for membership on the board of directors of the Regional Transportation District (RTD) and school district director. Current law does not set contribution limits for these contests. The contribution limits set by the bill for each election would have been \$2,500 for individuals, including political committees, and \$5,000 for small donor committees. The bill also contained campaign finance disclosure requirements for these candidates.

Initiatives and Referred Measures

State law concerning statewide ballot measures continues to be a topic of strong interest in the General Assembly. **House Bill 10-1370** increases disclosure by issue committees and individuals involved in the statewide ballot issue process. Specifically, the bill:

- requires the Secretary of State to notify statewide initiative petition proponents at the time a petition is approved that they must register an issue committee if 200 or more petition sections are printed or accepted in connection with the petition circulation;
- in association with the drafting of the ballot information booklet (Blue Book), requires persons who submit written comments for or against initiated or referred measures to provide their names and identify any organizations that they represent or with whom they are affiliated;
- within the analysis section for each measure in the Blue Book, requires the inclusion of language directing readers to information at the Secretary of State's website pertaining to issue committees that support or oppose the measure;
- clarifies what constitutes a "major purpose" for the purpose of the state constitution's campaign and political finance provisions, in light of a recent state Court of Appeals decision;
- requires issue committees making expenditures in excess of \$1,000 on broadcast, printed, mailed, or delivered communications to disclose within the communication the name of the issue committee making the expenditure, with specific instructions on how the disclaimer must appear or be broadcast in the communication; and
- provides for enforcement measures and penalties for issue committees that knowingly or intentionally fail to file reports pursuant to state campaign finance laws.

Senate Bill 10-216 changes the order that statewide ballot measures are required to appear on the ballot, so that, beginning with the 2010 general election, ballot measures will now appear in the following order:

- referred amendments to the Colorado Constitution;
- initiated amendments to the Colorado Constitution;
- referred propositions to change state statutes; and
- initiated propositions to change state statutes.

Previously, ballot measures appeared in the following order on the ballot:

- initiated amendments;
- referred amendments;
- initiated propositions; and
- referred propositions.

Four measures concerning initiatives and referred measures were postponed indefinitely in 2010. **House Bill 10-1047** would have established a uniform style for titles for statewide ballot issues, both initiated and referred. The bill would have established the language that begins each ballot title, with differing language for Taxpayer Bill of Rights (TABOR) and non-TABOR-related

issues. The bill allowed a ballot issue's key points to be presented in a bulleted list rather than a paragraph, and replaced the "yes" and "no" voting options with "yes/for" and "no/against." The bill also mandated other style features for statewide ballot titles.

House Bill 10-1100, which was postponed indefinitely, would have prohibited a ballot initiative proponent from withdrawing an initiative from consideration after the initiative has been filed with the Secretary of State for signature verification. The deadline for such filing is no later than three months and three weeks prior to the election. Current law allows a proponent to withdraw an initiative petition no later than 60 days prior to the election.

The bill would have made it a class 1 misdemeanor for a person to give or receive money or other valuable consideration to influence a person to withdraw an initiative petition. Under the bill, a petition would have been considered withdrawn if the proponents:

- did not submit the petition to the Secretary of State for title setting;
- did not circulate the petition for signatures after the title and signature clause had been set;
- discontinued circulation of a petition prior to the expiration of the filing period; or
- did not file the petition with the Secretary of State for signature review.

House Bill 10-1366, which was postponed indefinitely, would have created as a condition for those on parole or probation for offenses involving unlawful sexual behavior or felony fraud that the offender refrain from acting as a ballot petition circulator.

Finally, **Senate Concurrent Resolution 10-003**, which was postponed indefinitely, would have referred a constitutional amendment to the ballot for the 2010 general election that would have changed the minimum number of signatures required for citizen-initiated ballot measures by:

- requiring that 5 percent of the minimum total number of signatures be gathered from residents in each of the state's congressional districts; and
- raising the threshold for passage of an initiative from a simple majority to 60 percent of the total votes cast in the contest. The resolution waived this requirement and reverted to the majority vote requirement for initiatives seeking to repeal constitutional provisions in existence prior to the 2011 odd-year election, and certain amendments in Amendment 61, which will be on the 2010 ballot.

Local Election Issues

Under previous law, any action by the board of directors of a metropolitan sewage disposal district required approval of a majority of a quorum of its members present and voting at a regular or special meeting. **Senate Bill 10-053** excepts from these requirements weighted voting conducted under the district's bylaws, applicable resolutions from the board, and rules governing the procedures of the board.

Senate Bill 10-097, which was postponed indefinitely, would have modified the method of appointing members to a home rule charter commission. Currently, counties must hold a special election to decide if a home rule charter commission will be established and to elect its members.

The bill would have required that county commissioners appoint charter commission members following a public hearing where the board determines whether a commission should be formed. The bill also eliminated the county's authority to establish a mill levy to pay the expenses of the commission, and set requirements for the appointments by the board and for the development of a proposed charter by the commission.

The bill would have also altered the process for submission of a proposed charter to the registered electors of a county. Upon final acceptance of the charter by the board of county commissioners, the board would have been required to refer the charter to the registered voters at a coordinated election or general election at least 100 days prior to such election. The bill would have also addressed certain provisions relating to a revised charter, in the event that the first proposed charter was rejected by the voters.

Redistricting and Reapportionment

In 2011, Colorado will begin the process of setting state legislative and congressional district boundaries based on the 2010 U.S. Census results. Two bills enacted during the 2010 legislative session address redistricting and reapportionment. **House Bill 10-1210** implements these processes. Under the bill, new district boundaries will be in effect for the 2012 general election. The bill outlines the duties of the reapportionment commission (commission), the Office of Legislative Legal Services, and the Legislative Council Staff (LCS) with respect to the redistricting process, including requiring the commission to designate which state senatorial districts will stand for election in 2012 and 2014. The bill updates requirements for filling vacated state Senate seats so that the seat of a Senator elected in 2010 that is vacated prior to the start of the 2013 legislative session is filled from the district from which the Senator was elected, and a seat vacated once the session begins is filled from the district newly created by the commission; except that, senatorial seats vacated more than 55 days prior to the 2012 general election will be filled by election for the remainder of the term from the new district. The bill urges the Colorado Supreme Court to approve the commission's redistricting plan by December 14, 2011, in order to allow county clerks sufficient time to redraw precinct boundaries to accommodate precinct caucuses associated with the 2012 presidential election.

HB 10-1210 requires the purchase of a computer system by the LCS director to prepare legislative districts. The bill requires the Legislative Council to make certain data and the computer system available to the commission and the General Assembly to facilitate the drawing of district boundaries. Under the bill, the databases developed for the purposes of redistricting must be made available to the public and governmental agencies.

To cover expenses associated with state and congressional redistricting, and the expenses associated with a special legislative session for congressional redistricting, the bill creates the Redistricting Account within the Department of State Cash Fund.

House Bill 10-1408 changes statutory directions to courts to use certain criteria in determining the lawfulness of congressional districts or when adopting or enforcing changes to congressional districts. Specifically, the bill:

- removes the order of precedence for factors to be considered by the court;

- requires the court to consider population equality among districts, with contiguous precincts, and compliance with the federal Voting Rights Act, while granting the court authority to consider preservation of political subdivisions, preservation of communities of interest, district compactness and shape, and prior district lines; and
- strikes a directive to not use non-neutral factors such as political party registration and prior election results.

Previously, the neutral factors to be considered by the court were ranked in the order in which they were to be considered.

Vacancies in Office

Under current law, a vacancy in the office of U.S. Senator from Colorado is filled by appointment of the Governor. **Senate Bill 10-030**, which was postponed indefinitely, would have required such a vacancy to be filled by a special senatorial vacancy election, to be set by the Governor between 75 and 90 days after the vacancy occurs, but not within the 90 days prior to a general election. Vacancies in the office of Representative in Congress for Colorado are filled in this manner under current law.

Voter Registration and Identification

Current law allows an eligible voter to use a variety of documents as identification for election-related purposes. **House Bill 10-1091**, which was postponed indefinitely, would have eliminated as permissible forms of election-related identification a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.

Senate Bill 10-104, which was also postponed indefinitely, pertained to voter registration drives. The bill would have required a voter registration drive organizer to submit a list of circulators, along with a circulator affidavit and a copy of photo identification for each circulator, to the Secretary of State prior to the start of the registration drive. The affidavit would have required the circulator to attest that he or she:

- had read and understood the laws governing the conduct of voter registration drives;
- had never been convicted of election fraud or any other election-related offense;
- would ask each voter applying to register to vote a series of questions to determine voter eligibility under state and federal law; and
- had submitted a copy of photo identification to the voter registration drive organizer.

The bill would have required the Secretary of State to assign identification numbers to each voter registration drive and each circulator, which the circulator would then attach to each voter registration application. The bill would have required any circulator who was the subject of a court proceeding or hearing by the Secretary of State based on alleged fraud or abuse to make him or herself available for deposition or testimony, or the voter registration applications in question would be invalidated.

Miscellaneous Elections Issues

House Bill 10-1116 makes numerous changes to state election law to amend or remove obsolete, conflicting, or inconsistent provisions of law. The changes include:

- removing provisions that do not conform to current election practices;
- deleting dates that are no longer applicable, and harmonizing conflicting dates;
- clarifying the county clerk's office at which a voter must apply for a change of address during the period immediately preceding an election;
- specifying that no elector's voter registration record is to be cancelled for failure to vote;
- updating statutes and repealing obsolete language associated with the implementation of the statewide voter registration database and the federal Help America Vote Act;
- for primaries conducted as mail-ballot elections, allowing designated election officials to accept hand-delivered mail ballots and keep service centers open for longer than the previously established periods;
- clarifying signature verification requirements for mailed ballots;
- removing partisanship requirements pertaining to those testing electronic voting machines in nonpartisan elections; and
- for notice requirements associated with TABOR ballot issues that are placed on the ballot by a political subdivision of the state that has no designated election official, specifying that the government body is responsible for summarizing comments for and against the issues.

House Bill 10-1206, which was postponed indefinitely, would have granted voting rights to the two student members on the Board of Governors of the Colorado State University system. The bill would have made the student board positions gubernatorial appointments, and also contained eligibility requirements for the positions. Currently, student members of the board serve in an advisory role.

House Concurrent Resolution 10-1006, which was postponed indefinitely, would have submitted to the voters at the November 2010 general election a ballot question to amend Article X, Section 20 of the Colorado Constitution to require prior voter approval for any tax policy change resulting in a net tax revenue gain by the state or any local government.

Also postponed indefinitely was **Senate Bill 10-179**, which would have extended voter registration and voting eligibility to individuals:

- serving a sentence of parole;
- on probation;
- serving a sentence for a misdemeanor conviction;
- serving a direct sentence in a community corrections program for a felony conviction;
- placed in a community corrections program pursuant to a deferred judgment for a felony conviction; or
- sentenced to federal supervised release.

Senate Bill 10-179 clarified that individuals confined while awaiting trial are also eligible to register to vote and to vote by mail, while those serving a term of imprisonment for a felony conviction are not eligible for register or vote.