

Elections

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HB 11-1252 (Postponed Indefinitely)
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Voting Powers

HB 11-1012 (Postponed Indefinitely)
Unaffiliated Electors to Vote in Primary

HB 11-1222 (Lost in House)
PUC Member Accountability to Public

During the 2011 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. Of particular note was the legislative effort to comply with the federal Military and Overseas Voter Empowerment Act (MOVE Act) of 2009, which will result in earlier statewide primaries beginning in 2012. A summary of the legislation considered by the General Assembly in 2011 pertaining to elections follows.

Campaign Finance

House Bill 11-1117 codifies a procedure for subpoenas issued by administrative law judges in campaign finance proceedings. If a witness or party fails to comply with an administrative subpoena issued to address an alleged campaign finance reporting violation, the bill allows the agency or party that requested or issued the administrative subpoena to petition a district court to order compliance with the administrative subpoena. The witness or party may appear before the district court and show why he or she should not be ordered to comply with the administrative subpoena. If the witness or party fails to appear at the show cause hearing, the district court may issue a warrant for the subpoenaed witness's or party's arrest or impose other sanctions. If the subpoenaed witness or party does not show good cause why he or she should not be ordered to comply with the administrative subpoena, the district court shall order compliance with the administrative subpoena and may impose remedial and punitive fines.

House Bill 11-1229, which was postponed indefinitely, would have set the minimum amount of contributions or expenditures to trigger formation of an issue committee under the state Fair Campaign Practices Act (FCPA) at a statutory level of \$1,000. Under current law, an issue committee is formed and subject to campaign finance requirements when the committee raises or expends \$200 or more, but a 2010 federal appeals court decision held that this threshold failed to preserve First Amendment rights of free association. The bill would also have excluded the nomination and election of candidates from the definitions of "ballot issue" and "ballot question" in the FCPA and Colorado uniform election law. **Senate Bill 11-252**, which was also postponed indefinitely, would have modified the financial disclosure report filing deadlines for candidate committees, political committees, small donor committees, issue committees, and political parties under the FCPA. The bill would have aligned the filing deadlines with the new election deadlines adopted to comply with the federal Military and Overseas Voters Empowerment Act (MOVE Act) of 2009. The bill would also have eliminated some pre-election filings for primary elections.

Initiative and Referendum

House Bill 11-1035 adds requirements to the way an initiative or referendum must be described in the ballot information booklet (Blue Book) published by Legislative Council Staff. It requires that each analysis in the Blue Book contain language about how the ballot measure was placed on the ballot and how the ballot title and text of the measure were drafted. For referred measures, the required statement will inform readers that the ballot title and text of the measure were drafted by professional legal staff of the General Assembly and referred to voters by a vote of the General Assembly. For initiated measures, the statement will describe that the ballot title was drafted by professional staff of the Secretary of State, the Attorney General, and the General Assembly and

that the text of the measure was drafted by the proponents of the initiative, who collected signatures to place the measure on the ballot.

House Bill 11-1072 sets forth the duties and responsibilities of the two designated proponents of an initiative petition. Specifically, the designated representatives must:

- appear in person at the title board hearing in order for the initiative title to be set;
- sign a notarized affidavit at the first title board meeting stating that he or she is familiar with the laws governing the initiative process and the duties of a designated representative;
- submit the printer's proof of the petition sections to the Secretary of State for approval; and
- deliver the bound volumes of signed petition sections to the Secretary of State.

In addition, the designated representatives must file a report with the Secretary of State within ten days after filing a petition that includes information about paid petition circulators and other petition expenses. A registered voter may file a complaint with the Secretary of State alleging violations of these reporting requirements within ten days of a report being filed by the designated representatives. Complaints may be referred to an administrative law judge. If it is determined that a violation occurred, the designated representative is subject to a penalty equal to three times the amount of any expenditures omitted from or erroneously included on the required disclosure report. A registered voter who files a complaint may commence a civil action to recover costs and attorney fees from designated representatives found to have violated the reporting requirements.

House Bill 11-1090 and **House Bill 11-1304**, which were both lost, would have created style requirements for statewide ballot titles for initiated and referred measures. House Bill 11-1090 would have included the following changes to the ballot titles:

- presenting key points of the ballot issue as a bulleted list rather than in paragraph form;
- expanding the current "Yes" or "No" response to a ballot issue to "Yes/For" or "No/Against"; and
- replacing the phrase "and, in connection therewith" with the word "that" before the bulleted section of the ballot title.

The bill would have also increased reimbursement to counties by \$0.02 per statewide ballot measure for each active voter in a county at the time of the election. House Bill 11-1304 would have required statewide initiated and referred measures to use, to the extent possible, plain language in the ballot title. Plain language is described in the bill as:

- nontechnical language;
- clear and coherent writing; and
- words understood by an average reader.

Senate Concurrent Resolution 11-001, which was deemed lost, would have referred to voters a constitutional amendment changing the process for amending the constitution in the future. The referred amendment would have required constitutional amendments to receive at least 60 percent of the vote in order to be adopted, beginning with the 2013 election. It would have included a "grandfather" provision allowing voters to repeal constitutional amendments approved

before 2013 with a simple majority vote. It would have required that a certain number of petition signatures be collected in each of the state's seven congressional districts to initiate a constitutional amendment. Additionally, the referred amendment would have required a vote of 2/3 of the members of the General Assembly to repeal or amend an initiated statute approved by voters for a period of three years after the law took effect. Under current law, initiated laws can be changed by a majority vote of the legislature.

Mail Balloting

Current law requires metropolitan districts to distribute mail-in ballots to all voters who are on the list of permanent mail-in voters. **Senate Bill 11-057** gives metropolitan districts with 10,000 or more registered voters the option to limit the distribution of mail-in ballots to only voters who returned a mail-in ballot in one of the two most recent district elections and who requested a mail-in ballot for the district election. If a voter is not mailed a ballot because he or she did not vote in the two most recent elections, the metropolitan district must mail a postcard informing the voter about the election and options to vote. The process for metropolitan districts with fewer than 10,000 registered voters remains the same as under current law. Currently, Highlands Ranch and Pueblo West are the only two metropolitan districts in the state with 10,000 or more registered voters.

House Bill 11-1131, which was postponed indefinitely, would have implemented mail balloting as the principal form of voting in Colorado, with limited exceptions. Mail ballot elections would have been required for all general, primary, odd-year, recall, and congressional vacancy elections conducted on or after July 1, 2011. Counties where mail ballot elections would have resulted in higher costs would have been able to opt out of mail ballot elections, and municipalities and political subdivisions other than counties could also have opted not to conduct mail ballot elections. As an alternative to casting a ballot by mail, voters could have chosen to cast a ballot at a service center, at the county clerk's office, or at other locations designated by the county clerk.

Military and Overseas Voters

The federal Military and Overseas Voter Empowerment Act (MOVE Act) of 2009 updated existing federal law regarding the rights of members of the armed services, their family members, and other U.S. citizens living outside the United States to vote in U.S. elections. Among other provisions, the MOVE Act requires that states transmit validly requested absentee ballots to these voters no later than 45 days before a federal election. This requirement applies when the request for an absentee ballot has been received by that date.

The General Assembly adopted two bills that address the requirements of the MOVE Act. **House Bill 11-1219** adopts uniform state laws related to the MOVE Act, including specifying that the law applies to members of the active or reserve components of the U.S. military who are on active duty and are qualified to vote, eligible voters who reside overseas and were last eligible to vote in Colorado, and spouses and dependents of these individuals who are absent from the state as a result of the covered voter. The voting procedures in the bill apply to:

- a general, congressional vacancy, or primary election for federal office;
- a general, recall, or primary election for statewide or state legislative office or state ballot measure; and
- any other election coordinated by the county clerk and recorder.

Under House Bill 11-1219, the Secretary of State is required to make information available to covered voters on the procedures for registering to vote and casting a military-overseas ballot. The Secretary of State is also required to create various forms, applications, and other materials related to military and overseas voting and to electronically provide election information and materials. The bill establishes procedures for voter registration; allowable means of transmitting ballots to voters; deadlines for the mailing, receipt, and counting of military-overseas ballots; and other provisions. The bill also makes conforming amendments to existing state election law. **Senate Bill 11-189** moves up the dates for primary elections and precinct caucuses in even-year elections to earlier in the year and adjusts various election deadlines to comply with the MOVE Act. Notably, under this legislation, primary elections in 2012 will be held on June 26 (the last Tuesday in June), up from the second Tuesday in August under current law. Deadlines for candidate petitions and party caucuses will also occur earlier in the year.

The General Assembly also considered bills that would modify the process for uniformed services voters to request and receive ballots. **House Bill 11-1321**, which was postponed indefinitely, would have allowed a uniformed services voter to verbally provide information to a commissioned officer in order to complete a mail-in ballot request on behalf of the voter. **House Bill 11-1322**, which was deemed lost, would have transferred \$100,000 from the Department of State Cash Fund to the Internet-based Voting Pilot Program, which was created by the legislature in 2009. The pilot program is currently funded only by gifts, grants, and donations.

Redistricting

Pursuant to the U.S. and Colorado constitutions, the General Assembly is responsible for adjusting the boundaries of Colorado's congressional districts to balance population based on the 2010 Census. **Senate Bill 11-268**, which was deemed lost, and **House Bill 11-1319**, which was postponed indefinitely, proposed redistricting maps. Additionally, **House Bill 11-1276**, which was deemed lost, would have modified the statutory direction to the courts that must be used when determining the lawfulness of congressional districts or when adopting or enforcing changes to congressional districts. The bill would have repealed statutory direction enacted by the General Assembly in 2010 and restricted the use of "non-neutral" factors such as political party registration and electoral outcomes when evaluating congressional districts.

Voter Identification

House Bill 11-1003, which was postponed indefinitely, would have required that identification used for election-related purposes include a photograph of the individual. The bill would have removed several forms of identification from the list of acceptable identification. However, residents of state-licensed institutions would have been able to use a Medicare or Medicaid card as voter identification.

Voter Registration

Senate Bill 11-018, which was postponed indefinitely, would have required proof of citizenship to register to vote in Colorado. To register with the county clerk or at a driver's license examination facility, a voter would have had to submit one of the following forms of identification, or a legible copy:

- a United States passport;
- a birth certificate;
- a certificate of naturalization (or verifiable naturalization number); or
- other documentation of citizenship allowed under federal law.

Voters who are currently registered would not have been required to provide proof of citizenship. In addition, proof of citizenship would not have been required to update a voter's address, personal information, or party affiliation. Military and overseas voters registering by federal postcard application would have been exempt from the requirements of the bill.

House Bill 11-1252, which was postponed indefinitely, would have required the Secretary of State to compare information in the statewide computerized voter registration system (SCORE) against other state and federal agency records to determine the citizenship status of registered voters. Following a review of available evidence, a notice would have been sent, with return receipt requested, to any voter registered in SCORE who the secretary believed was not a U.S. citizen. Registered voters receiving such a notice would have had 90 days to submit documentation proving their citizenship to the secretary. A U.S. passport, birth certificate, naturalization information, or other documents accepted under federal law would have been considered acceptable documentation. Any voter failing to submit proof of citizenship within 90 days of the secretary's notice would have been deemed to have an incomplete registration record and would have become ineligible to vote. The bill would also have required the secretary to assist voters claiming financial hardship by obtaining a certified copy of the voter's birth certificate. **Senate Concurrent Resolution 11-002**, which was also postponed indefinitely, would have referred a constitutional amendment to voters at the 2012 general election containing the same requirements as House Bill 11-1252.

House Bill 11-1096, which was postponed indefinitely, would have created a process allowing young people to preregister to vote at the age of 16. Persons over the age of 16 who would not have reached the age of 18 at the next election who were otherwise eligible to vote would have been allowed to preregister under the bill. Preregistered voters would then be automatically registered to vote upon turning 18 years of age.

Voting Powers

House Bill 11-1012, which was postponed indefinitely, would have permitted eligible voters unaffiliated with a political party to vote in a primary election for candidates of a political party without declaring affiliation to that party. Unaffiliated voters would have been able to choose to cast the primary ballot of a particular party when they were voting at a polling place or by mail ballot.

As introduced, **House Bill 11-1222** would have subjected Public Utilities Commission (PUC) commissioners to retention elections after the expiration of their initial two-year appointments. Commissioners would have been limited to two terms total and would have had to seek statewide voter approval for a second term. Under current law, commissioners are appointed to four-year terms, with no limit on the number of terms they may serve. The bill was lost in the House.