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What a Surprise! Still More Election Code Revisions

by Norman F. Kron

Get out the cake and the party hats, it is the quinquennial birthday of the Uniform Election Code of 1992 ("Code"). This year, the state celebrates by the adoption of no fewer than six new laws, each designed to make elections cheaper and easier to administer and to make the Code conform to the Colorado Constitution. If the party hats are on, here is this year's review of the latest and greatest Code revisions.

Background

Effective January 1, 1993, the Code dramatically revised election procedures for many Colorado elections.¹ Since its adoption, the Code has been affected or revised by the TABOR Amendment,² H.B. 93-1255, H.R.-2,³ 1993 election rules,⁴ H.B. 94-1286, H.B. 94-1294, 1994 election rules,⁵ H.B. 95-1241, H.B. 96-1061, Referendum B, and a handful of other bills and laws impacting elections in one way or another. The tradition is continued by H.B. 97-1234, H.B. 97-1235, S.B. 97-031, H.B. 97-1031, S.B. 97-223, and even H.B. 97-1077. This article summarizes and classifies this year's panoply of Code revisions.

Tabor Notice Timing

In November 1996, voters adopted Referendum B,⁶ a relatively innocuous revision to the TABOR Amendment. Referendum B changed two deadlines: the time for the receipt of public comments concerning ballot issues was changed from thirty days before the election to forty-five days; and the time for the TABOR notice to be mailed to all registered voters was changed from between twenty-five and fifteen days before the election to before thirty days.

This constitutional change forced corresponding changes in the Code sections dealing with the production of the TABOR notice,⁷ and naturally had unintended side effects. The forty-fifth day prior to a November election falls on a Saturday, so the last day for the receipt of comments would back up to the preceding Friday (the forty-sixth day).⁸ Petition representatives would have the weekend until the close of business on the following Monday (the forty-third day) to file their summaries of comments for their ballot issues. The local election official will have until the close of business on the next day (Tuesday, the forty-second day) to provide the local TABOR notice to the county clerk. The county clerk then has until the thirtieth day (a Sunday, of course, effectively backing the date up to the prior Friday) to print and mail the TABOR notice package.

The important change is the amount of time for the local official to submit the notice to the

county clerk after the deadline for receiving comments. The time has shifted from five days to three. This change was due to an unanticipated side effect of Referendum B--it added another weekend into the county clerks' time for production of the notice, thereby allowing the clerks fewer working days.

Unfortunately, three related issues remain unresolved: (1) all municipalities and special districts that require lists of registered voters from the county clerk or lists of property owners from the county assessor to make mailing labels for TABOR notices will find that even though the TABOR notices must be mailed by the thirtieth day before the election, there is no obligation for either county official to provide lists until well after the thirtieth day;⁹ (2) because TABOR notices are now mailed thirty days before the election and mail ballots are mailed on the old fifteen-to-twenty-five-day time frame,¹⁰ TABOR notices and ballots can no longer be mailed in the same package; and (3) the state's TABOR notice statute on initiatives and referendums was not changed, so it is slightly unconstitutional.¹¹

Watching the Code is a lot like being a diehard Cubs fan: "Wait till next year."

Primary Election Polling Places

With county board approval, county clerks may now combine election precincts for a primary election.¹² Cost savings should result.

Voter Registration

This year's Code changes simplify voter registration. The Code now allows an elector to withdraw or cancel his or her registration by self-affirmation rather than by oath¹³ and allows improved reporting and recording of deaths,¹⁴ changes in residence,¹⁵ and multiple registrations¹⁶ for faster updating of registration records. The county clerk may list a person's registration as "inactive" if a mailed notice to the person is returned as undeliverable, if a mail ballot is returned and the clerk follows a confirmation procedure, or if the person does not vote in the general election.

Inactive electors may still vote if they are otherwise qualified. Inactive voters may become active by voting, applying for an absentee ballot, or confirming registration information with the county clerk. The result of being inactive through two general elections is that the county clerk "shall" cancel the person's registration and (horrors) shall send a list of canceled voters to the county chairpersons of the two major political parties and the Secretary of State.¹⁷ Voter registration also is canceled on the county clerk's receiving notice that a federal court has convicted the elector of a felony; to vote, the convict must reregister.¹⁸

A person can now register at any time at a county clerk's office or municipal clerk's office in the state, regardless of the location of the person's residence. So, for example, a person living in Boulder who commutes to Denver can register in Denver using his or her Boulder County address.¹⁹ Registration records for any election shall include all electors who have registered at least twenty-nine days before the election.²⁰

Mobile registration sites were eliminated.²¹ A number of technical amendments were made, of interest only to technicians.²²

The voter information card sent by the county clerk is now to be sent by forwardable mail no later than twenty-five days before the general election to active voters.²³ The card must include an affidavit that can be returned by a disabled elector to request a change in polling location if the polling place is not accessible.²⁴

An issue has existed concerning when registrations sent by mail are effective. The Code makes the date of the postmark the date of registration. If there is no postmark, and if the unpostmarked registration is received within five days after the deadline for registration before a particular election, the person will be registered as of the last day allowed for registration, and therefore is allowed to vote.²⁵

Ballots

County clerks must have their ballots printed at least thirty-two days prior to their primary, odd year, congressional vacancy, and general elections.²⁶

Although it required several Code amendments to do what would seem to be simple, duplicate ballot stubs are no longer required.²⁷ The evil vanquished by this revision for a mail ballot election is the common practice of families sitting around the breakfast table, shuffling their mail ballots, and returning them in the wrong envelopes. In the old days (that is, last year), if the duplicate stub number did not match the number of the ballot mailed to the voter, the vote did not count. Now, with no stub, the ballot will count. The lack of the numbered stub also will help eliminate voter concerns about the secrecy of mail ballot elections--the number attached to the ballot made some voters think that their votes would not be secret. No stub, no problem.

The meaning of "yes" and "no" is to be printed on the ballot for initiatives and referendums only one time.²⁸

Election Day Procedures

Election judges are no longer required to audibly announce a voter's name as the ballot is put in the box.²⁹

"This year's six new laws are designed to make elections cheaper and easier to administer and to make the Code conform to the Colorado Constitution."

If an elector is registered in more than one precinct, he or she shall vote only in the precinct of the most recent registration and the election judges are no longer required to inform the elector of the correct precinct.³⁰

Mail Ballots

Mail ballots are to be mailed only to "active" registered electors. If an elector's registration is "inactive," the elector may still vote in the mail ballot election, but must acquire a ballot from a designated office location³¹ or by absentee request.

Absentee Voters

A number of technical absentee voter glitches were fixed by specifying information to be included in an absentee ballot packet; eliminating requests for address correction; making the presence of party representatives at group voting at nursing homes necessary only if representatives are available; eliminating the need to record the name of the person who delivers an absentee ballot and the time the ballot is received; and eliminating the 5 p.m. election day deadline for requesting and voting an emergency absentee ballot--thereby changing the deadline to 7 p.m.³²

Early Voting

To cut costs without significantly affecting voters, early voting is now available only for ten days before the primary and fifteen days before a November election conducted by the county clerk.³³ The county clerk may increase the number of early voters' polling places.³⁴

Recall Elections

A number of technical changes make recall elections easier to administer. No recall petition may be circulated or filed against an officer whose term will expire within six months.³⁵

The number of signatures required for a nonpartisan recall is determined as of the date that the form of the recall petition is approved by the official who will receive the signed petition.³⁶ Before circulation of a recall petition, the form of the petition has to be approved by the official who will receive the signed petition. The Secretary of State no longer approves local forms.³⁷

Petition circulators have sixty days to gather signatures.³⁸ After the signed petition is filed, the receiving officer has ten working days to determine the number of valid signatures and whether the petition is sufficient.³⁹ After the official's determination, protests can be filed within fifteen days.⁴⁰ Recall petitions may be amended once.⁴¹ Once the petition is found to be sufficient and the protest period has passed, the official transmits it with a certificate of sufficiency to the governing body, which sets an election between forty-five and seventy-five days thereafter, unless a general election is to be held within ninety days, in which case the recall election is held at the same time as the general election.⁴²

Within ten working days of the certificate of sufficiency, the officer being recalled may submit a statement of justification of up to 300 words that shall be included on the ballot.⁴³ Persons desiring to be candidates to fill the recalled officer's position must file nominating petitions or write-in affidavits within fifteen days after the date on which the governing body sets the election date.⁴⁴

Local governments are to reimburse victorious incumbents for recall election expenses up to \$10,000 at a rate not to exceed forty cents *per eligible elector*. The old rule was forty cents *per voter*.⁴⁵

Campaign Literature

It is no longer a crime to fail to disclose the source of campaign literature on the literature itself. Two of the unconstitutional statutes that required disclosure have been repealed.⁴⁶ Unfortunately, one of the statutes was not discovered, and lurks in the brand new Fair Campaign Practices Act.⁴⁷

Campaign Finance

The Fair Campaign Practices Act,⁴⁸ adopted by the voters in November 1996, dramatically changed campaign finance regulation and extended it to many more types of political subdivisions than had previously been the case. Legislative clarification or helpful Secretary of State rules should be forthcoming. A discussion of the many changes wrought by the Fair Campaign Practices Act is beyond the scope of this article, but, it is hoped, will be addressed in detail in an upcoming article.

Conclusion

In all, about nineteen bills having to do with elections were introduced into the 1997 General Assembly; the majority failed. Thus, things could be worse. However, there are storm clouds on the horizon. The Secretary of State is promulgating new rules that should be fully operational⁴⁹ before the November 1997 election. There is already loose talk about next year's election bill. Unfortunately, there is no nifty word like "quinquennial" to describe a sixth birthday celebration, so everyone will just have to muddle through.

NOTES

- ^{1.} Parts 1 to 13 of Article 1 of Title 1, CRS, as amended, referred to herein as the "Code."
- ^{2.} Colo. Const. Art. X, § 20, a/k/a Bruce Amendment, a/k/a TABOR ("Taxpayer's Bill of Rights"), a/k/a Amendment 1.
- ^{3.} National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77 (1993) (codified at 42 U.S.C. § 1973gg [1993]).
- ^{4.} Current Rules and Regulations Governing Election Procedures, Colorado Secretary of State, August 30, 1993.
- ^{5.} Rules and Regulations Governing Election Procedures, Colorado Secretary of State, Sept. 14, 1994.

6. See An Analysis of 1996 Ballot Proposals, Legislative Council of the Colorado General Assembly, Research Publication No. 415 at 4-6 and 48-49 (1996). Referendum B amended Colo. Const. Art. X, § 20(3)(b).

7. CRS §§ 1-7-901(4), 903(3), 904.

8. See the special timing rule in CRS § 1-7-901(4).

9. CRS §§ 1-5-303, 304.

10. See CRS § 1-7.5-107(3)(a).

11. CRS § 1-40-125(2). It is also irrelevant, since the state sends its "bluebooks" independent of the TABOR notice because of amendments to Colo. Const. Art.V, § 1(7.5).

12. CRS § 1-5-101(4).

13. CRS § 1-2-601.

14. CRS § 1-2-602.

15. CRS § 1-2-603.

16. CRS § 1-2-604.

17. CRS § 1-2-605.

18. CRS § 1-2-606.

19. CRS §§ 1-2-202(1) and (2), 31-10-204.

20. CRS § 1-2-202(7).

21. CRS § 1-2-212 (repealed).

22. CRS §§ 1-2-201(3), 204(2)(i), 213(2)(d), 216, 223, 301, 303, 304 (repealed), 209(3), 226 (repealed), 302; 1-9-101; 1-8-208(2)(a).

23. CRS § 1-5-206(1).

24. CRS § 1-2-225(2).

25. CRS § 1-2-508(1)(c).

26. CRS § 1-5-403(1).

27. The change from "shall" to "may" in the first sentence of CRS § 1-5-407(1) made duplicate ballot stubs optional in all elections; CRS §§ 1-5-408, 1-7-502; 1-7-503, duplicate stubs optional in paper ballot and electronic voting system elections; CRS § 1-8-107(1) and 1-8-108, eliminating absentee ballot stubs, but not numbers; CRS § 1-5-407(1.5), duplicate stubs optional in mail ballot elections.

28. CRS § 1-40-115(2).

29. CRS §§ 1-7-503(2), 1-8-304(1).

30. CRS §§ 1-2-303(1), 304(2).

31. CRS § 1-7.5-107(3)(a) and (c).

32. CRS §§ 1-8-106, 111(1), 112, 113(2), and 115(2), respectively.

33. CRS § 1-8-202 (prior law allowed twenty-one days of early voting).

34. CRS § 1-8-204.

35. CRS § 1-12-102(4).

36. CRS § 1-12-106. See CRS § 1-12-105 concerning school district recall petitions.

37. CRS § 1-12-108(4).

38. CRS § 1-12-108(7.5).

39. CRS § 1-12-108(8)(c).

40. CRS § 1-12-108(9)(a).

41. CRS § 1-12-108(9)(c).

42. CRS § 1-12-111.

43. CRS § 1-12-112(1).

44. CRS § 1-12-117.

45. CRS § 1-12-120(2).

46. CRS §§ 1-13-108 (repealed), 31-10-1521.5 (repealed); see *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511 (1995).

47. CRS § 1-45-107(2).

48. Part 1 of Article 45 of Title 1, CRS. See An Analysis of 1996 Ballot Proposals, Legislative Council of the Colorado General Assembly, Research Publication No. 415 at 27-33 and 56-67 (1996).

49. The same as the Emperor's Death Star, *Return of the Jedi* (Lucasfilm, Ltd., 1984); re-released 1997, with enhancements, not unlike the Code.0

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