

Voting Under Colorado's Mail Ballot Election Act

by James J. Petrock and John M. Dingess

On May 14, 1991, Gilpin County—the site of Colorado's first gold rush—became the site of yet another historic (if not so momentous) event. On that date, Gilpin was the first Colorado county to hold a mail ballot election under the state's Mail Ballot Election Act¹ ("Act"). A proposal to enact a one percent county-wide sales tax was submitted to all qualified electors of Gilpin County, with the return vote by mail as well. The issue was defeated.

This article discusses statutory and administrative guidelines controlling mail ballot elections. It also examines the practical lessons learned during this state's first four mail ballot elections.

Goal: Increased Voter Participation

The mail ballot concept eliminates variables frequently affecting voter turnout. It is an election procedure that is particularly suited to mountainous areas and other sparsely populated rural counties. The vagaries of weather are neutralized and should not affect election results. The mail ballot also eliminates any advantage in access to polls that voters in densely populated municipalities may have over voters residing in rural portions of a county. At least twelve states, mostly western, allow some type of mail ballot elections.²

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Colorado's plethora of local government units, such as special district, and its large sparsely populated areas make regular trips to the polling place a significant inconvenience for many voters. Even voters who live in cities and commute to work are detoured on election day. This results in small turnouts for many special district and other local government elections. Significant expenditures of public funds, through bond issue authorizations, frequently are approved or rejected by the vote of a tiny fraction of eligible voters. One of the Act's goals is to increase voter participation.³

Election Procedures

Elections under the Colorado Election Code of 1980⁴ and the Colorado Municipal Election Code of 1965,⁵ as well as any school district⁶ or special district⁷ election may be conducted by mail under the Act.⁸ Exceptions are elections or recall elections involving partisan candidates and any election held as a part of or on the same day as a primary, general or congressional election.⁹

The local official responsible for conducting a mail ballot election (such as the county clerk, special district secretary or school board secretary) must notify the Colorado Secretary of State, at least seventy-five days before the election date, of the entity's determination to hold a mail ballot election. The local official then is responsible for preparing a "proposed plan" for conducting the election.¹⁰

The Secretary of State was directed by the Act to promulgate rules governing mail ballot elections.¹¹ Those rules provide, in part, as follows:

1. The governing board of the entity choosing to hold a mail ballot election must incorporate its decision in the minutes of a regular meeting or adopt a resolution.¹²

2. Notice of the election must be given to the electorate pursuant to the statutes governing the special election.¹³

3. Notice of the election must be given to the local county clerk and recorder specifying a date for the clerk to deliver a list of registered voters.¹⁴ A similar procedure is followed with the county assessor when property owners are the electorate.¹⁵

4. The entity appoints judges to check registrations; receive ballots; handle "walk-in" and absentee ballots; and count and certify the results.¹⁶

In addition, the political entity must submit a written plan to the Secretary of State describing in detail how the election will be conducted.¹⁷ The plan

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must include the following information: the jurisdiction involved; the type of election; citations to enabling law; the number of eligible electors; the names of administrators; the places where ballots must be deposited; a written time table for conducting the election; and a description of the procedures to be used for ensuring ballot security and reconciliation, signature verification and other administrative details.¹⁸

The Secretary of State's rules additionally address the procedures for compiling registration books¹⁹ and for designing²⁰ and mailing ballots.²¹ These rules also discuss absentee voting,²² in-person voting²³ and replacement ballots.²⁴ Finally, the rules describe other administrative details.²⁵

Early Returns

The goal of increased voter participation clearly was attained in the Gilpin County sales tax election. The 1991 ballot had a 56 percent turnout. In contrast, a 1983 Gilpin County sales tax special election generated a 34 percent voter turnout. Further, the mail ballot election costs less than a voting machine election. The Gilpin County Clerk estimated a \$500 savings on the 1991 election (\$2,435 for actual mail ballot election costs versus an estimated \$3,004.50 for a voting machine election). The savings resulted primarily from use of deputy county clerks, rather than private citizens, as election judges.

In the initial foray into mail ballot elections, the Gilpin County Clerk encountered several minor problems requiring attention from the Secretary of State. Close coordination between the County Clerk and the U.S. Postal Service was an obvious necessity. Envelopes were addressed with route and box numbers found in voter registration rolls. This resulted in the return of approximately fifty ballots because the post office required use of street names and numbers on those particular envelopes. Some complaints were received from voters about the requirement of paying postage for returning ballots. However, on balance, the clerk estimated that fewer than 2 percent of the voters participating registered any complaints. Thus, the election went smoothly.

Since the Gilpin County mail ballot election, three other entities have used the procedure: Adams County School District 14, Breckenridge Sanitation District and Weld County. All three experienced substantially higher voter

turnouts in their mail ballot elections than in previous traditional elections.²⁶ These mail ballot elections also cost less than previous walk-in elections. Weld County saved \$24,000 over the cost of its last previous traditional election involving similar special issues. Cost savings were lower numerically, but not proportionately, for the smaller entities. All three expect increased savings in subsequent mail ballot elections.

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The three entities also reported minor technical problems, such as the large size of the ballots, which, along with the return envelopes, increased postage costs. As in Gilpin County, the voters complained about the cost of return postage. Nevertheless, payment of the postage by the elector is required by statute.²⁷

The three entities report the following results from their first use of mail ballot elections:

- 1) Adams County School District 14 voters defeated a proposed \$1.5 million proposal to hire additional teachers;
- 2) Breckenridge Sanitation District voters approved inclusions and a large connection fee; and
- 3) Weld County electors voted to allow the court to move county buildings outside of Greeley and not to increase sales taxes to keep county offices in the city.

Conclusion

Procedures for conducting an election under the Act are stated in more or less “cookbook” fashion in the Act and in the rules and regulations promulgated thereunder. The practitioner who counsels an election entity is well advised to read and follow these materials carefully. Additionally, practical assistance may be obtained from the Secretary of State.

The Act expires July 1, 1994.²⁸ Before expiration, the Secretary of State must report to the Colorado General Assembly concerning the Act's implementation and use.²⁹ If the first four elections are

any indication, the report will show significant increased voter participation and election cost savings.

NOTES

1. CRS § 1-7.5-101 *et seq.*

2. The following states allow mail ballot elections (separate and distinct from absentee ballots): Alaska, Arizona, California, Florida, Kansas, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, Oregon and Washington. In most cases, only nonpartisan local government elections by mail are allowed. However, some states allow all types of elections by mail in sparsely populated regions. The enabling legislation for these states is as follows: Alaska, Alaska Stat. § 15.20.800 (1990); Arizona, Ariz. Rev. Stat. Ann. § 16-558 (1991); California, Cal. Elections Code § 1351 (1992); Florida, Fla. Stat. Ann. § 101.6101 (1991); Kansas, Kan. Stat. Ann. § 25-432 (1991); Minnesota, Minn. Stat. Ann. § 204B.45 (1991); Missouri, Mo. Ann. Stat. § 115.650 (1992); Montana, Mont. Code Ann. § 13-19-101 (1990); Nevada, Nev. Rev. Stat. § 293.343 (1991); New Mexico, N.M. Stat. Ann. § 1-23-1 (1991); Oregon, Or. Rev. Stat. § 254.465 (1989); and Washington, Wash. Rev. Code Ann. § 29.36.120 (1990). Michigan allows mail ballot elections in the event of malfunction of other voting devices. Mich. Comp. Laws Ann. § 6.1837 (1991).

3. CRS § 1-7.5-102.

4. CRS 1-1-101 *et seq.*

5. CRS § 31-10-101 *et seq.*

6. CRS §§ 22-31-101 *et seq.*, 22-42-102.

7. CRS §§ 32-1-801 *et seq.*, 29-1-302.

8. CRS § 1-7.5-103(1).

9. CRS § 1-7.5-104(2).

10. CRS § 1-7.5-105(1).

11. CRS § 1-7.5-106.

12. 8 C.C.R. 1501-1, Rule 17.1.2b.

13. 8 C.C.R. 1505-1, Rule 17.3.1b.

14. 8 C.C.R. 1505-1, Rule 17.3.1c.

15. 8 C.C.R. 1505-1, Rule 17.3.1d.

16. 8 C.C.R. 1505-1, Rules 17.2, 17.4.3, 17.4.4, 17.4.6, 17.4.8 and 17.4.9.

17. 8 C.C.R. 1505-1, Rule 17.3.2.

18. *Id.*

19. 8 C.C.R. 1505-1, Rule 17.3.4.

20. 8 C.C.R. 1505-1, Rule 17.3.5.

21. 8 C.C.R. 1505-1, Rule 17.4.1.

22. 8 C.C.R. 1505-1, Rule 17.4.2.

23. 8 C.C.R. 1505-1, Rule 17.4.4.

24. 8 C.C.R. 1505-1, Rules 17.4.5 and 17.4.7.

25. 8 C.C.R. 1505-1, Rules 17.5 through 17.7.

26. Adams County School District 14 reported a four-fold increase in voters; Breckenridge Sanitation District had a voter increase of 75 percent; and Weld County had a 49.3 percent voter response for mail ballot election versus a 32.3 percent voter response for the last similar special election issue.

27. CRS § 1-7.5-107(4)(b).

28. CRS § 1-7.5-111.

29. CRS § 1-7.5-110.