

## **RULE 45: REGULATORY ANALYSIS OF PROPOSED RULE**

This regulatory analysis of proposed Rule 45 is provided by the Secretary of State as of October 13, 2005, pursuant to § 24-4-103(4.5), C.R.S., for the public hearing on the rule to be held on October 31, 2005.

Proposed Rule 45 of the Secretary of State's Election Rules contains certification standards for voting systems to be used in Colorado, pursuant to § 1-5-601, *et seq.*, C.R.S., as amended. More specifically, the proposed rule establishes minimum standards for electronic and electromechanical voting systems in accordance with § 1-5-616, C.R.S.

Section 1-5-616, C.R.S., complements Section 301 of the Help America Vote Act of 2002 (HAVA), which establishes certain national voting system standards and mandates that all polling places be equipped with direct recording electronic (DRE) or other disability accessible voting systems by no later than January 1, 2007. In addition, pursuant to § 1-5-601.5, C.R.S., all voting systems and voting equipment offered for sale in Colorado on or after May 28, 2004 shall meet the 2002 voting systems standards promulgated by the Federal Election Commission (now known as the Election Assistance Commission under HAVA).

### **REGULATORY ANALYSIS**

- 1) **Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:**
  - a) All Colorado voters will be affected by the proposed rule because it, in conjunction with state statutes and federal law, requires that voting systems and equipment used in Colorado meet certain security and performance standards. In addition, the disability community will benefit from the provision of accessible voting equipment at each polling place because it will allow disabled voters to cast their ballots in a manner meant to maximize voter privacy and independence.
  - b) It is difficult to assess the cost impact of this proposed rule because the voting system standards established under HAVA and by the FEC in 2002 must be met by voting system vendors prior to systems being certified in Colorado. It is anticipated that compliance with those standards will be much more costly for vendors than complying with the proposed rule. However, the public will ultimately bear the cost of implementing HAVA and the standards enumerated in the proposed rule.
- 2) **Probable quantitative and qualitative impact of the proposed rule:**
  - a) It is anticipated that the provision of disability accessible voting systems in all polling places in the state will considerably enhance the quality of the voting experience for persons with disabilities. It is further anticipated

that the use of accessible voting systems, in conjunction with a statewide voter registration and election management system, will improve local and statewide voting administration and the timely tabulation and reporting of election results.

- b) It is anticipated that Proposed Rule 45 will have a relatively minimal impact in-and-of-itself on the cost of elections. However, the requirement that all voting systems in Colorado have a voter verifiable paper record, pursuant to § 1-5-801, *et seq.*, C.R.S., increases voting system certification costs. In addition, the HAVA mandate that a disability accessible voting system be provided in every polling place in the state is only partially federally funded under Title II of HAVA. Consequently, the public will likely bear the brunt cost of purchasing and maintaining such systems.
- 3) **Cost to the agency of enforcement and effect on state revenues:** Pursuant to § 1-5-616, C.R.S., the Secretary of State is mandated to adopt minimum standards for electronic and electromechanical voting systems purchased and used in this state, but the rule should have no effect on state revenues.
- 4) **Cost/benefit analysis and cost of inaction:** Pursuant to § 1-5-616, C.R.S., the Secretary of State is mandated to adopt minimum standards for electronic and electromechanical voting systems purchased and used in this state, so inaction is not a viable alternative. Because adoption of certification standards is statutorily mandated, it is presumed that the Colorado General Assembly has already resolved the cost/benefit analysis issue.
- 5) **Less costly or intrusive alternatives:** Given the mandates of § 1-5-601, *et seq.*, C.R.S., and federal law, the proposed rule contains the most cost-effective and least-intrusive standards feasible at this time.
- 6) **Alternative methods of achieving proposed rule results:** Given the mandates of § 1-5-601, *et seq.*, C.R.S., and federal law, alternative methods to rule adoption are not an option.

Submitted this \_\_\_\_ day of October 2005.

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