



Revised Proposed Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules

December 31, 2009

1. Basis and Purpose

This proposed statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are proposed to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2009).

The proposed amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, Title 1 of the Colorado Revised Statutes. Such proposed revisions are necessary to improve the administration of elections in Colorado, and to increase the transparency and security of the election process. The proposed amendments are further necessary to implement changes to the election laws made during the 2009 regular session of the 67th General Assembly and answer questions arising under Title 1 of the Colorado Revised Statutes.

The Secretary of State finds that the proposed amendments and revisions to specific rules are necessary to implement changes made by House Bill 09-1335 regarding the certification of voting systems. The legislative changes removed the requirement that federal certification first be obtained before state certification be conducted; that all voting systems meet, at a minimum, the federal 2002 Voting System Standards; and allows the Secretary of State to incorporate testing documentation from other states and/or conduct functional certification testing in tandem with another jurisdiction.

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2009), which authorizes the Secretary of State:
“[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1), C.R.S. (2009), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA. . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”

3. Section 1-5-601.5, C.R.S., (2009), which authorizes the Secretary of State to require by rule that voting systems and voting equipment satisfy certain voting systems standards promulgated by the federal Election Assistance Commission.
4. Section 1-5-613(1), C.R.S., (2009), which requires the Secretary of State to “adopt uniform rules in accordance with article 4 of title 24, C.R.S., for the purchase and sale of voting equipment in the state.”
5. Section 1-5-616, C.R.S., (2009), which authorizes the Secretary of State to “[a]dopt rules in accordance with article 4 of title 24, C.R.S., that establish minimum standards for electronic and electromechanical voting systems.”
6. Section 1-5-617, C.R.S., (2009), which requires a political subdivision to “[a]pply to the secretary of state for approval of the purchase, installation, and use of the system” and authorizes the Secretary of State to “[p]rescribe the form and procedure of the application by rule adopted in accordance with article 4 of title 24, C.R.S.”
7. Section 1-5-619, C.R.S., (2009), which authorizes the Secretary of State to adopt rules regarding the temporary approval of a voting system for use by a political subdivision.
8. Section 1-5-623(4), C.R.S., (2009), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify permissible conditions of use governing electronic voting devices or systems or related components of such devices or systems in accordance with the requirements of this part 6.”