

SB17-138 Draft Strike-below 2/26/2017_J by H. Branscomb *Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. In Colorado Revised Statutes, **amend** 1-7-105 as follows:

1-7-105. Watchers at primary elections. (1) Each political party AND EACH CANDIDATE participating in a primary election ~~shall be~~ ARE entitled to have ~~a watcher in each precinct~~ AT LEAST ONE WATCHER AT ANY ONE TIME IN EACH ~~in the county~~ AREA WHERE A STEP IN THE CONDUCT OF THE ELECTION OCCURS. THE CHAIRPERSON OF THE COUNTY CENTRAL COMMITTEE OF EACH POLITICAL PARTY AND ANY CANDIDATE FOR OFFICE MAY PROVIDE CREDENTIALS TO PERSONS WHO WILL BECOME WATCHERS. IF THE CHAIRPERSON IS NOT ABLE TO MAKE THE APPOINTMENTS, THE CHAIRPERSON OF THE STATE CENTRAL COMMITTEE OF THE POLITICAL PARTY OR ANOTHER OFFICIAL OF THE STATE POLITICAL PARTY SHALL SIGN CERTIFICATES OF APPOINTMENT. The chairperson OR OTHER APPOINTING OFFICIAL ~~of the county central committee~~ of each PARTICIPATING political party shall certify the persons selected as watchers on forms provided by the county clerk and recorder and, TO THE EXTENT POSSIBLE, submit the names of the persons selected as watchers to the county clerk and recorder ~~., to the extent possible the chairperson shall submit the names by the close of business on the Friday immediately preceding the election~~ NO LATER THAN THE WEDNESDAY BEFORE THE DATE ON WHICH THE VOTER SERVICE AND POLLING CENTERS ARE REQUIRED TO BE OPEN. A WATCHER SHALL SURRENDER THE CERTIFICATE TO AND BECOME SWORN IN BY THE SUPERVISOR OF ELECTION JUDGES OR STAFF AT THE TIME THE WATCHER FIRST ENTERS THE LOCATION TO BE WATCHED.

~~(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate shall submit the names by 1 the close of business on the Friday immediately preceding the election~~

SECTION 2. In Colorado Revised Statutes, **amend** 1-7-106 as follows:

1-7-106. Watchers at general and congressional vacancy elections. Each participating political party or issue committee whose candidate or issue is on the ballot, and each unaffiliated and write-in candidate whose name is on the ballot for a general or congressional vacancy election, is entitled to have ~~no more than one watcher at any one time in each voter service and polling center in the county and at each place where votes are counted in accordance with this article.~~ AT LEAST ONE WATCHER AT ANY ONE TIME AT EACH AREA WHERE A STEP IN THE CONDUCT OF THE ELECTION OCCURS. IN THE CASE OF AN ISSUE COMMITTEE, THE REGISTERED AGENT OF

THE ISSUE COMMITTEE IS THE AUTHORIZED REPRESENTATIVE OF THE ISSUE COMMITTEE ENTITLED TO PROVIDE CREDENTIALS TO PERSONS WHO WILL BECOME WATCHERS. IF THE CHAIRPERSON OF THE COUNTY CENTRAL COMMITTEE OF A POLITICAL PARTY IS NOT ABLE TO MAKE THE APPOINTMENTS, THE CHAIRPERSON OF THE STATE CENTRAL COMMITTEE OF THE POLITICAL PARTY OR ANOTHER OFFICIAL OF THE STATE POLITICAL PARTY SHALL SIGN CERTIFICATES OF APPOINTMENT. The chairperson OR OTHER APPOINTING OFFICIAL ~~of the county central committee of each major political party, the county chairperson or other authorized official of each minor political party,~~ the issue committee, or the write-in or unaffiliated candidate shall certify the names of one or more persons selected as watchers on forms provided by the county clerk and recorder and, TO THE EXTENT POSSIBLE, submit the names of the persons selected as watchers to the county clerk and recorder NO LATER THAN THE WEDNESDAY BEFORE THE DATE ON WHICH THE VOTER SERVICE AND POLLING CENTERS ARE REQUIRED TO BE OPEN. ~~To the extent possible, the chairperson, authorized official, issue committee, or candidate shall submit the names by the close of business on the Friday immediately preceding the election.~~ The watchers. A WATCHER shall surrender the certificate to AND BECOME SWORN IN BY the SUPERVISOR OF election judges OR STAFF at the time THE WATCHER FIRST enterS the LOCATION TO BE WATCHED. ~~voter service and polling center and are sworn by the judges.~~ This section does not prevent party OR UNAFFILIATED candidates or county party officers from visiting voter service and polling centers or drop-off locations to observe the progress of voting.

SECTION 3. In Colorado Revised Statutes, **amend** 1-7-107 as follows:

1-7-107. Watchers at nonpartisan elections. Candidates for office in nonpartisan elections, and proponents and opponents of a ballot issue, are each entitled to HAVE AT LEAST ONE WATCHER AT ANY ONE TIME IN ~~appoint one person to act as a watcher in~~ EACH AREA WHERE A STEP IN THE CONDUCT OF THE ELECTION OCCURS. ~~every polling place in which they are a candidate or in which the issue is on the ballot.~~ IN THE CASE OF A BALLOT ISSUE, THE REGISTERED AGENT OF THE PROPONENTS OR OPPONENTS, AS APPLICABLE, IS THE AUTHORIZED REPRESENTATIVE OF SUCH PROPONENTS AND OPPONENTS ENTITLED TO PROVIDE CREDENTIALS TO PERSONS WHO WILL BECOME WATCHERS. The candidates or proponents and opponents shall certify the names of persons so appointed to the designated election official on forms provided by the official and, TO THE EXTENT POSSIBLE, submit the names of the persons selected as ~~watchers~~ to the county clerk and recorder. ~~To the extent possible, the candidate, proponent, or opponent shall submit the names by the close of business on the Friday immediately preceding the election~~ NO LATER THAN THE WEDNESDAY BEFORE THE DATE ON WHICH THE VOTER SERVICE AND POLLING CENTERS ARE REQUIRED TO BE OPEN. A WATCHER SHALL SURRENDER THE

CERTIFICATE TO AND BECOME SWORN IN BY THE SUPERVISOR OF ELECTION JUDGES OR STAFF AT THE TIME THE WATCHER FIRST ENTERS THE LOCATION TO BE WATCHED.

SECTION 4. In Colorado Revised Statutes, 1-7-108, **amend** (3); and **add** (4) and **add** (5) as follows:

1-7-108. Election watchers - requirements - ~~duties~~ - oath or

affirmation - definitions. (3) (a) (I) Each watcher ~~shall have~~ HAS the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

(4) BEFORE WATCHING, EACH CERTIFIED WATCHER SHALL TAKE AN OATH OR AFFIRMATION IN SUBSTANTIALLY THE FOLLOWING FORM: "I,, DO SOLEMNLY SWEAR (OR AFFIRM) THAT I AM AN ELIGIBLE ELECTOR OF THE STATE OF COLORADO; THAT I AM NOT A CANDIDATE NOR A MEMBER OF A CANDIDATE'S IMMEDIATE FAMILY; THAT I AM APPOINTED AS A WATCHER BY AN AUTHORIZED ENTITY AND MY NAME IS HEREBY SUBMITTED TO THE DESIGNATED ELECTION OFFICIAL AS A WATCHER FOR THIS ELECTION; AND THAT I AM AWARE OF AND WILL COMPLY WITH COLORADO LAW REGARDING WATCHING; THAT I WILL NOT TRY TO DETERMINE HOW ANY ELECTOR VOTED, NOR WILL I DISCLOSE HOW ANY ELECTOR VOTED IF IN THE COURSE OF WATCHING SUCH KNOWLEDGE COMES TO ME, NOR WILL I DISCLOSE OR RECORD ANY CONFIDENTIAL VOTER INFORMATION THAT I MAY OBSERVE; THAT I HAVE NEVER BEEN CONVICTED OF ANY ELECTION OFFENSE AND THAT, IF ANY BALLOTS ARE COUNTED BEFORE THE POLLS CLOSE ON THE DATE OF THE ELECTION, I WILL NOT DISCLOSE THE RESULT OF THE VOTES UNTIL AFTER THE POLLS HAVE CLOSED."

(5) THE APPOINTING OFFICIAL SHALL WITHDRAW THE CREDENTIALS OF AN APPOINTED WATCHER IF EVIDENCE OF THE WATCHER'S INELIGIBILITY IS PRESENTED TO THE APPOINTING OFFICIAL BY THE COUNTY CLERK AND RECORDER.

SECTION 5. In Colorado Revised Statutes, 1-2-302, **amend** (8) as follows:

1-2-302. Maintenance of computerized statewide voter

registration list - confidentiality. (8) The secretary of state shall provide adequate technological security measures to prevent unauthorized access to the computerized statewide voter registration list. The secretary of state, the department of revenue, the department of public health and environment, the department of corrections, and the clerk and recorders shall not sell, disclose, or otherwise release a social security number, a driver's license or a state-issued identification number, or the unique identification number assigned by the secretary of state to the voter

pursuant to section 1-2-204 (2.5) or electronic copies of signatures created, transferred, or maintained pursuant to this section or section 42-1-211 to any individual other than the elector who created such signature absent such elector's consent; except that nothing in this subsection (8) prohibits the sale, disclosure, or release of ~~an electronic copy~~ A COPY of such signature for use by any other public entity in carrying out its functions; or the sale, disclosure, or release of a photocopied or microfilmed image of an elector's signature INCLUDING THE DISCLOSURE OF ANY SUCH INFORMATION TO AN INDIVIDUAL APPOINTED AS A WATCHER IN ACCORDANCE WITH SECTION 1-7-108. COPIES OF SUCH INFORMATION MAY NOT BE REMOVED FROM CONTROL OF THE COUNTY CLERK AND RECORDER. NOTHING IN THIS SECTION OR THE UNIFORM ELECTION CODE, MUNICIPAL ELECTION CODE, OR SPECIAL DISTRICT ELECTION CODE PROHIBITS A WATCHER, APPOINTED IN ACCORDANCE WITH SECTION 1-7-108, FROM INSPECTING SIGNATURES.

SECTION 6. In Colorado Revised Statutes, 1-9-201, **amend** (2) as follows:
1-9-201 Right to vote may be challenged

(2) An election judge shall challenge any person intending to vote who the judge believes is not an eligible elector. In addition, challenges may be made by watchers or any eligible elector ~~of the precinct~~.

SECTION 7. Act subject to petition - effective date -

applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day 1 period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to elections conducted on or after the applicable effective date of this act.

Explanation:

Sections 1,2,3 are now made consistent with each other and with the new Colorado model of elections (no use of precinct voting or tabulation). The text conforms to the transition to central count model where there are multiple areas where steps of the election are conducted, perhaps in the same room.

“Area” is the term already used in SOS election rules. Clarification of the appointing entity is the same as with the SOS bill and made consistent through the three parallel sections.

In C.R.S. the appointment of the watcher is made by an authorizing entity and then the appointing certificate is brought by the watcher to the election judges or other official at the place to be watched where, in the first appearance the oath is taken. The DEO may check the credentials of the watcher sometime after they are submitted for accuracy and may remove the watcher under various statutes. This way the watching is not obstructed by a bureaucratic process under control of the DEO and watching can begin immediately. If the list is provided prior to appearance, the DEO may also check in advance. The list provided to the county clerk and recorder is a convenience and not a requirement, as it presently exists in statute but the recommended date of submission is appropriately earlier. Note that the submission of the certificate signed by the appointing official is also in effect a submission to the county clerk and recorder that satisfies [C.R.S. 1-7-108](#).

As part of an argument against the SOS version of the bill, note that [C.R.S. 1-7.5-114](#) provides for one watcher in the office of the Designated Election Official during the period in which mail ballots may be applied for or received- a long time. That statute clearly points to steps in the conduct of the election that are not conducted by election judges or voters and that are intended to be watched.

Section 4 retains the rights of the watcher and the original scope in the existing law.

Section 4 also includes an oath. This oath is consistent with requirements in [C.R.S. 1-7-108](#). It does not require a gag until after formal results have been announced. Several statutes show this gag rule to end at 7PM on election day and not after: [C.R.S. 1-7.5-107.5](#); [C.R.S. 1-7.5-202](#)

Added paragraph 5 provides for the appointing official to be required to withdraw the appointment in view of evidence that the watcher is ineligible. This clarifies that the DEO may not act as an apriori obstruction for the watcher in cases where watchers must begin watching without delay.

Section 5 provides for a remedy to any statutory restriction on access to confidential information that might stand as an obstruction to the role of the watcher. This provision gives access during the role of the watcher, but also prevents removal of copies of any confidential information. This Section 5 is modeled after language submitted as part of the watcher bill in 2016.

Section 6 updates some text referring to watchers that seems limited to a precinct polling place election and deserves update.