

OFFICE OF LEGISLATIVE LEGAL SERVICES

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Kate Meyer Esther van Mourik
Nicole H. Myers

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Michele D. Brown

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AGENDA

Committee on Legal Services

March 4, 2016

Noon

HCR 0112

(Lunch will be provided for the Committee members)

1. Review of New Rules (rules adopted or amended on or after November 1, 2015, and before November 1, 2016, and scheduled to expire May 15, 2017):
 - a. Rule 7.2.6 of the Secretary of State, Department of State, concerning mail ballot return envelopes, 8 CCR 1505-1 (LLS Docket No. 160146; SOS Tracking No. 2015-00846).
Staff: Kate Meyer, Senior Attorney
(Status: Uncontested)
2. Approval of HB 16-1257 by Representative McCann; also Senator Scheffel - Rule Review Bill.
3. Consideration of revised draft bill authorizing the study of a recodification of Title 12 of the Colorado Revised Statutes.
Staff: Jennifer Gilroy, Revisor of Statutes
Christy Chase, Managing Senior Attorney
Thomas Morris, Managing Senior Attorney

4. Publications Matters:
 - a. Discussion regarding the possible discontinuation of copyrighting the publications ancillary to the Colorado Revised Statutes;
 - b. Discontinuation of charging vendors for the use of the Colorado Revised Statutes database;
 - c. Update on the Publications Contract.
Staff: Jennifer Gilroy, Revisor of Statutes

5. Scheduled Meetings During the Session:
First Friday of the Month during Session from Noon to 2:00 p.m.: April 1 and May 6

6. Other.

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MEMORANDUM

TO: Committee on Legal Services

FROM: Kate Meyer, Office of Legislative Legal Services

DATE: February 29, 2016

SUBJECT: Rule 7.2.6 of the Secretary of State, Department of State, concerning mail ballot return envelopes, 8 CCR 1505-1 (LLS Docket No.160146; SOS Tracking No. 2015-00846).¹

Summary of Recommendation

On February 9, 2016, the Secretary of State ("Secretary") adopted various elections rules, including Rule 7.2.6 pertaining to third-party delivery of mail ballots. Although Rule 7.2.6 is not scheduled to expire until May 15, 2017, the Committee on Legal Services ("Committee") asked the Office of Legislative Legal Services ("Office") to review this rule during the current regular session of the General Assembly.

The Office has reviewed Rule 7.2.6 and concludes that it is not sufficiently similar to its expired predecessor rule so as to constitute a repromulgation in violation of the "State Administrative Procedures Act"² ("APA"). Further, the rule is otherwise within

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rulemaking authority. Under § 24-4-103 (8) (c) (I), C.R.S., these rules are not scheduled to expire until May 15, 2017, but the Committee on Legal Services asked that the Office of Legislative Legal Services review the rules during the current regular session of the General Assembly.

² Article 4 of title 24, C.R.S.

the Secretary's rulemaking authority. **We therefore recommend that the Committee take no action regarding Rule 7.2.6.**

Rulemaking Authority

Section 1-1-107 (1) (b) and (2) (a), C.R.S., generally authorizes the Secretary to adopt rules to administer and enforce election laws:

1-1-107. Powers and duties of secretary of state - penalty. (1) In addition to any other duties prescribed by law, the secretary of state has the following duties:

(b) To enforce the provisions of this code;

(2) In addition to any other powers prescribed by law, the secretary of state shall have the following powers:

(a) To promulgate, publish, and distribute, either in conjunction with of the election laws pursuant to section 1-1-108 or separately, such rules as secretary of state finds necessary for the proper administration and enforcement of the election laws, including but not limited to rules establishing the amount of fees as provided in this code;

With specific regard to mail ballot elections, § 1-7.5-106, C.R.S., provides:

1-7.5-106. Secretary of state - duties and powers. (1) In addition to any other duties prescribed by law, the secretary of state, with advice from election officials of the several political subdivisions, shall:

(a) Prescribe the form of materials to be used in the conduct of mail ballot elections; except that all mail ballot packets shall include a ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope;

(b) Establish procedures for conducting mail ballot elections; except that the procedures shall be consistent with section 1-7.5-107;

(c) Supervise the conduct of mail ballot elections by the election officials as provided in section 1-7.5-105 (3).

(2) In addition to other powers prescribed by law, the secretary of state may adopt rules governing procedures and forms necessary to implement this article and may appoint any county clerk and recorder as an agent of the secretary to carry out the duties prescribed in this article.

Analysis

1. Rule 7.2.6 is not sufficiently similar to its predecessor and thus does not constitute a repromulgation.

In 2014, the Secretary promulgated elections rules, including a rule requiring mail ballot return envelopes to contain an affirmation to be used by electors availing themselves of third-party mail ballot delivery. At its December 19, 2014, hearing, the Committee voted not to extend Rule 7.2.6 of the rules of the Secretary of State concerning elections.³ That rule ultimately expired on May 15, 2015, by operation of its inclusion in the annual "Rule Review Bill".⁴

The elections rules adopted by the Secretary on February 9, 2016, contain a new version of Rule 7.2.6.⁵ The two versions of Rule 7.2.6 are as follows⁶:

2014 version of Rule 7.2.6	2016 version of Rule 7.2.6
<p>7.2.6 Effective January 1, 2015, in addition to the affirmation required by section 1-7.5-107(3), C.R.S., each mail ballot return envelope must include the following affirmation: "For third party delivery: I am voluntarily giving my ballot to (Blank) for delivery. I have marked and sealed my ballot in private and have not allowed any person to observe the marking of the ballot, except for those authorized to assist voters under state or federal law."</p>	<p>7.2.6 Each mail ballot return envelope may include the following statement: "I am voluntarily giving my ballot to (name and address) for delivery on my behalf." If the voter leaves the fillable portion of the statement blank, the county clerk must accept the ballot for counting if it is otherwise valid.</p>

³ An excerpt of the minutes of the December 19, 2014, Committee meeting relating to the discussion of Rule 7.2.6 is attached as **Addendum A**.

⁴ S.B. 15-100, 2015 Colo. Sess. Laws, ch. 182.

⁵ The Secretary adopted an intervening version of Rule 7.2.6 on August 6, 2015. Although that version of the rule was scheduled to be heard by the Committee at its December 15, 2015, meeting, the Committee removed that rule from consideration, pending rulemaking by the Secretary to address the Office's position that the 2015 version of the rule constituted a repromulgation of the expired 2014 version. The 2015 version of Rule 7.2.6 is attached as **Addendum B**.

⁶ Emphases added to indicate identical language.

The APA prohibits repromulgation of a rule that has expired pursuant to the rule review process, and declares void any rules so repromulgated. Section 24-4-103 (8) (d), C.R.S., states, in pertinent part:

24-4-103. Rule-making - procedure - definitions - repeal. that portion of any rule specifically disapproved by bill shall no longer be effective, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. Each agency shall revise its rules to conform with the action taken by the general assembly. **A rule which has been allowed to expire by action of the general assembly** pursuant to the provisions of paragraph (c) of this subsection (8) because such rule, in the opinion of the general assembly, is not authorized by the state constitution or statute **shall not be repromulgated** by an agency unless the authority to promulgate such rule has been granted to such agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists. **Any rule so repromulgated shall be void.... (emphases added)**

The APA does not define or describe repromulgation, and there is no jurisprudence of which the Office is aware that interprets, applies, or otherwise provides guidance on this concept. The Committee has only infrequently considered alleged instances of repromulgation, but has developed a standard of "substantial similarity" to assess whether a rule constitutes repromulgation of a prior rule allowed to expire via a rule review bill.

The 2016 version of Rule 7.2.6 differs from its expired predecessor in several meaningful ways. First, the new rule altogether omits the "privacy prong" (through which an elector would assert that he or she completed the ballot in private) of the prior rule. Much of the Committee's discussion of the 2014 version of Rule 7.2.6 revolved around this component.⁷

Further, the 2016 version denominates the mail ballot return envelope piece as a "statement" rather than an "affirmation". While a statement is a fairly general term⁸, an

⁷ The 2015 version of Rule 7.2.6 also omitted the privacy prong. Because the Committee, during its December 2014 hearing, apparently objected to both prongs of the 2014 version of Rule 7.2.6, such omission, alone, would not have been enough to render the 2016 version not a repromulgation.

⁸ A "statement" is a "something stated as: (a) a single declaration or remark". Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/statement> (last visited February 26, 2016).

affirmation⁹ is decidedly weightier or more formal. In the context of the "Uniform Election Code of 1992"¹⁰, the term "self-affirmation" is imbued with some consequence: "Self-affirmation" is defined as "a sworn statement made in writing and signed by an individual, as though under oath. Any person falsely making a self-affirmation [commits perjury]"¹¹.

The 2016 version of Rule 7.2.6 also clarifies that leaving the statement blank does not nullify the ballot contained within the envelope.

Most crucially, the 2016 version of Rule 7.2.6 changes the rule from imposing a mandatory feature on all mail ballot return envelopes to merely granting permission for inclusion of such statement. Converting a former requirement to a permissive provision fundamentally alters that provision's character and effect and renders the 2016 version of Rule 7.2.6 substantively dissimilar from its predecessor.

In light of the differences between the 2014 and 2016 versions of Rule 7.2.6, the latter is not sufficiently similar to the former and is thus not a repromulgation in contravention of the APA.

2. Rule 7.2.6 is within the Secretary's rulemaking authority.

The Office's review of Rule 7.2.6 is not limited to a repromulgation analysis, but must also consider, per regular rule review procedure, whether the Secretary otherwise has legal authority to promulgate the rule. The Office concludes that Rule 7.2.6 is within the Secretary's rulemaking authority.

Section 1-7.5-107 (4) (b) (I) (B), C.R.S., contains the 10-ballot limit for persons delivering mail ballots on behalf of other electors:

1-7.5-107. Procedures for conducting mail ballot election - primary elections - first-time voters casting a mail ballot after having registered by mail to vote - in-person request for ballot - repeal. (4) (b) (I) The eligible elector may:

⁹ An affirmation is "a solemn declaration made under the penalties of perjury by a person who conscientiously declines taking an oath", Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/affirmation> (last visited February 26, 2016) or "a pledge equivalent to an oath but without reference to a supreme being or to 'swearing'", *Black's Law Dictionary* (10th ed. 2014).

¹⁰ Articles 1 through 13 of title 1, C.R.S.

¹¹ § 1-1-104 (45.5), C.R.S.

(B) Deliver the ballot to any person of the elector's own choice or to any duly authorized agent of the county clerk and recorder or designated election official for mailing or personal delivery; **except that no person other than a duly authorized agent of the county clerk and recorder or designated election official may receive more than ten mail ballots in any election for mailing or delivery; or (emphases added)**

There is no specific method set forth in statute to enforce the 10-ballot delivery limit, nor is there explicit direction to the Secretary to regulate compliance with this limit. Nevertheless, under § 1-7.5-106, C.R.S., *supra*, the Secretary is required to "[p]rescribe the form of materials to be used in the conduct of mail ballot elections"¹² and "[e]stablish procedures for conducting mail ballot elections; except that the procedures shall be consistent with section 1-7.5-107".¹³ Furthermore, the Secretary is empowered to "adopt rules governing procedures and forms necessary to implement [article 7.5 of title 1, C.R.S., pertaining to mail ballot elections]"¹⁴ and is generally obligated to "enforce the provisions of [the "Uniform Election Code of 1992"]".¹⁵

In light of these powers and duties, it is reasonable to conclude that the Secretary has rulemaking authority to fill the gap in statutory oversight presented by the relevant statute. Further, Rule 7.2.6 is, per § 1-7.5-106 (1) (b), C.R.S., "consistent with" § 1-7.5-107 (4) (b) (I) (B), C.R.S., because it neither abrogates nor impairs an elector's statutory right to deliver his or her ballot to a third party for delivery.

Conclusion

Rule 7.2.6 is not a repromulgation of the expired 2014 version of Rule 7.2.6. Further, the Secretary has rulemaking authority to promulgate rules to enforce the 10-ballot limit of § 1-7.5-107 (4) (b) (I) (B), C.R.S. We therefore recommend that the Committee take no action on Rule 7.2.6 of the rules of the Secretary of State concerning mail ballot return envelopes.

¹² § 1-7.5-106 (1) (a), C.R.S.

¹³ § 1-7.5-106 (1) (b), C.R.S.

¹⁴ § 1-7.5-106 (2), C.R.S.

¹⁵ § 1-1-107 (1) (b), C.R.S.

ADDENDUM A
SUMMARY OF MEETING
COMMITTEE ON LEGAL SERVICES

December 19, 2014

The Committee on Legal Services met on Friday, December 19, 2014, at 10:02 a.m. in HCR 0112. The following members were present:

Senator Steadman, Vice-chair
Senator Brophy
Senator Guzman
Senator Johnston (present at 12:10 p.m.)
Senator Roberts
Representative Foote
Representative Gardner
Representative Kagan (present at 10:06 a.m.)
Representative McCann

[EXCERPT OF DISCUSSION OF RULE 7.2.6]

12:44 p.m.

Representative Kagan moved to extend Rule 7.2.6 of the rules of the Secretary of State and asked for a no vote. He said this does not appear on the agenda but I do make that motion and request that we discuss the matter.

Senator Steadman said let me put this in context for the Committee. We are now moving to agenda item 1g., which are rules of the secretary of state. This rule that Representative Kagan has called out is subsumed within the larger packet of rules. Staff had not brought this before the Committee for a recommendation. Staff did not see a problem with it. Representative Kagan, however, has made a motion to not extend this particular rule. It might be helpful if we take this rule in isolation since we have a motion on the table and we'll get to the rest of the rule subsequent to dealing with Representative Kagan's motion.

12:46 p.m. – Jason Gelender, Managing Senior Attorney, Office of Legislative Legal Services, addressed the Committee. He said I'll explain why the Office does not think that Rule 7.2.6 creates an issue. This issue concerns a statutory limitation on delivery of ballots by a third party and then a secretary of state rule related to that. The specific statute is section 1-7.5-107 (4) (b) (I) (B), C.R.S., which imposes a 10-ballot limit on third-party delivery of mail ballots in an election. There are no additional statutory provisions that specify how the limit is to be enforced and there is no specific rule-

making authority tied directly to this statute for the secretary of state to enforce the provision. Having said that, the rule-making authority of the secretary of state over elections is broad. There are two sources for that authority. The first and most general is section 1-1-107 (2) (a), C.R.S., which gives the secretary of state authority to promulgate rules necessary for the proper administration and enforcement of the election laws. More specific to this issue and the main basis for our belief that there's not an issue with the rule is section 1-7.5-106 (1) (a), C.R.S., which gives the secretary of state specific rule-making authority to prescribe the form of materials to be used in the conduct of mail ballot elections and specifically requires that all mail ballot packets include a ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope. There's also additional specific authority there to establish procedures for conducting mail ballot elections. What the secretary of state has done in Rule 7.2.6 is require the mail ballot return envelope to include an affirmation of the voter saying that for third-party delivery, I'm voluntarily giving my ballot to a specific person, require the name and address of that person, and then it goes on to say how they've marked and sealed the ballot in private and not allowed it to be observed, etc. We believe that, under the secretary of state's authority to prescribe the form of mail ballot election materials, this rule falls under that authority. I don't know if there are folks here from the secretary of state's office or not to further explain the rule.

Senator Steadman said on this part about marking and sealing the ballot in private and not allowing any person to observe the marking of the ballot, is there any requirement in statute that voters are prohibited from having someone observe them marking their ballot? Mr. Gelender said that answer I actually do not know for certain. I do know that when you go to the voting booths you are put in privacy and that there is a general expectation that that's how it will be done.

Senator Steadman said but in the privacy of one's home where we're marking mail ballots, can every eligible voter in the household sit together at the kitchen table and mark their ballots in sight of each other and perhaps even discuss with each other how they're marking the ballots? There's nothing prohibiting that in statute is there? Mr. Gelender said no, I don't believe there is.

Senator Steadman said yet the rule appears to create that prohibition because the voter is required to affirm that they've done this in private when there's no statutory obligation on them to do so. Mr. Gelender said yes.

Representative Kagan asked do you think that the authority to prescribe the form of the materials encompasses the authority to prescribe the content of the materials? Mr. Gelender said that's a very interesting question. I think that in this case when you're looking at what the materials are, the form, to at least some degree, is the content. I suppose there would be some limits in contradiction of other statutes if they, for example, required who you are voting for to be on the outside of the envelope or something like that. This particular language to me falls within the realm of form.

Representative Kagan asked do you think that relevant to this discussion is the requirement that the procedures that the secretary of state is authorized to establish must be consistent with section 1-7.5-107, C.R.S.? That section is very proscriptive. In parts it says the wording that should be on these forms and it specifies that the ballot may be delivered to any person of the elector's own choice for delivery directly or delivery in the mail. Do you think it's consistent with section 1-7.5-107, C.R.S., to make requirements that you must tell us who the person is who you gave your ballot to – and this only applies to persons who have their ballot delivered – and you have to mark your ballot in private? Do you think that's consistent with the structure in section 1-7.5-107, C.R.S.? Mr. Gelender said with regard to your first question, I do believe that the language about identifying the third-party delivery is supported by rules. The reason why is the secretary of state has broad authority to enforce election laws. We do have a law that a person may deliver no more than 10 mail ballots on behalf of another. There's nothing that specifies how the secretary of state is to attempt to track or enforce that and under a rational basis test I think that it's not irrational for them to say if we make them list these people on the ballots we can see if the same name and address shows up more than 10 times. That part of it is very clearly in by rule. The bit about marking and sealing in private, I'm not aware of anything that specifically conflicts with requiring that oath. Nothing requires it to be there but I don't know of anything that conflicts with it.

Senator Steadman said as a voter I have the right to mark my ballot with you watching, do I not? Mr. Gelender said as far as I know, yes.

Senator Steadman said as a voter I have a right to give my ballot to a third party to deliver to the clerk's office on my behalf, don't I? Mr. Gelender said yes.

Senator Steadman said given that I have a right to do both of those things, doesn't this rule conflict with my rights as a voter? Mr. Gelender said the first part of it I think clearly does not for the reasons I've specified. In no way does indicating who you're giving it to impinge on your ability to give it to somebody.

Representative Gardner said I think it interesting this question about can you show everyone as a matter of law your ballot as you're marking it because in election standards the notion is that a voter is supposed to vote in secrecy. Setting that aside, this issue is new on the agenda and I'm a little disturbed. I respect my colleague Representative Kagan for wanting to bring an issue forward. Bringing issues forward that staff has not is something this Committee can do. I guess in my own experience the way that has been done is to ask staff to look at the issue and write a memo. It seems to me like we have an issue before us that needs some work as well as the ability of the department to come forward. I would point out that while I will not be here for this, the rule review bill will come back to this Committee on two occasions in each house. I would ask and request of Representative Kagan that perhaps we lay this over and ask staff to do a memo and ask the secretary of state to state their position. I think the issues you raise are extremely legitimate, but it does seem that it ought to be done

in a more informed way and with the assistance of staff as well as the department. I'll point out also that we will have a new secretary of state who may have a different view of the regulation. I would ask the Chair to lay this over.

Senator Steadman said I should advise you all that I was made aware yesterday that this would be an issue. I discussed the matter with staff. I asked the staff to advise the department of state and they were advised and had an opportunity to be here. This rule is part of the larger group of rules that are before us on the agenda that were uncontested until this new wrinkle. It's been on the agenda and the department of state was notified, albeit about 24 hours ago. Representative Kagan has a motion on the floor and I consider it in order. I understand the suggestion that we spend more time on this, but that will be for the Committee to decide. I'm not going to take it off the table.

Senator Johnston said to the last conversation about whether this is a close call about regulatory authority under the statutes or not, this doesn't actually look like a close call at all. If you look at section 1-7.5-107 (4) (b) (I) (B), C.R.S., it says deliver the ballot to any person of the elector's own choice or to any duly authorized agent of the county clerk and recorder or designated election official for mailing or personal delivery, except that no person other than a duly authorized agent of the county clerk and recorder or designated election official may receive more than 10 mail ballots in any election for mailing or delivery. There is nothing in that statute that authorizes any additional rule-making or burden beyond what that statute prescribes. The statute intentionally carved out the less than 10 exception as the section of statute that is exempt from other rule-making. The more than 10 exceptions are the ones under subsection (4)(b)(I)(A), which refers to the county clerk and recorder, designated election official, voter service, polling center, or drop-off location. The statute very intentionally regulated and specified 10 and over and very intentionally did not for 10 and under. For me this is not at all a close call that there's rule-making power here. I would say if someone wants to change this they should run a bill, but I don't see anything that grants power to a rule-making agency to change that. I would support Representative Kagan's motion.

Representative Gardner said to clarify, is the motion to extend?

Representative Kagan said the motion is to extend the rule and I'm urging a no vote.

Representative Gardner said I'm going to be a yes vote. I think there is a legitimate question raised here. Let me express my concern that we have a very specific rule item and I regret that the secretary of state's office has not seen fit to come and defend its rule or to say that it's uncontested. I do feel an obligation to the process to vote yes to extend and then were I to be successful I don't think that should preclude further consideration on this on the two more occasions this will come before the Committee.

Senator Roberts said I'll echo Representative Gardner not just because I'd like us to be on the same page on one of his last acts, but I'm troubled by the process. I understand that maybe there was 24 hour notice but this is certainly new to me. We get this information and the paperwork at least a week in advance and it gives us time to consider it and put it in context and with the expectation that the agency would have enough time. Who knows why 24 hours wasn't notice sufficient for them to send someone over. For the same idea that perhaps it's a conversation worthy to have, it feels a little procedurally insufficient including to the agency involved. For that reason I'll be an aye vote.

Senator Brophy said for all of those reasons, I would respectfully ask that the motion be withdrawn. I don't think it's appropriate to vote on it without giving more of an opportunity for the secretary of state's office to come over and respond. Notice was less than 24 hours ago. I realize that it's now 24 hours ago that notice was given, but there was no guarantee when this meeting started that the issue would be taken up in excess of 24 hours. As Representative Gardner pointed out, the Committee will meet two more times with the ability to vote on whether to extend this rule or not. At that point give the secretary of state the appropriate amount of time to either prepare a defense of their rule or say we agree and we're seeking a legislative remedy.

Representative Kagan said thanks for the suggestion. I'm going to decline to withdraw the motion. One of my concerns is that this rule, in my opinion, is putting requirements on voters and a subclass of voters – those voters who choose lawfully and as authorized by statute to give their ballot to somebody else for delivery. Statute says that should be a person of their own choosing. This rule seeks to put an additional requirement on those voters. To me, that's a very serious matter. It directly impacts the ballot and it is not explicitly or even implicitly authorized, I believe, by statute. I think it would be a mistake to allow a rule that without statutory authorization puts a burden and a restriction on a subclass of voters – those who are not able for whatever reason or who do not choose for whatever reason to go to the ballot box themselves or to put a stamp on the ballot themselves. This is a very serious matter and I consider it a matter of urgency. I am declining to withdraw the motion.

Senator Roberts said I have to say that I think what Representative Kagan has just done is given a policy-based rationale for this and yet what we've heard is more of a process. This Committee has kind of prided itself on focusing on process. It doesn't bode well going into this next year where we have some changes coming up in the chambers. I'll just say my opinion is it feels much more partisan than policy. I hope that's not the case because we have some changes coming around the corner and this Committee has oftentimes steered away from the more partisan positions. I need to leave to catch a plane but I think it's somewhat disrespectful to the agencies impacted.

Representative Gardner said ironically I may agree with you on the policy aspect of this. As Senator Roberts notes, the process seems to me to be wholly inadequate and it's very disturbing to me. For that reason, I'll be an aye vote.

The motion failed on a vote of 0-6, with Representative Foote, Senator Guzman, Senator Johnston, Representative Kagan, Representative McCann, and Senator Steadman voting no.

ADDENDUM B

2015 version of Rule 7.2.6

- 7.2.6 Effective January 1, 2016, each mail ballot return envelope must include the following: "I am voluntarily giving my ballot to (name and address) for delivery on my behalf."

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REDRAFT
2.22.16

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 16-0930.01 Thomas Morris x4218

COMMITTEE BILL

Committee on Legal Services

BILL TOPIC: "COLS OLLS Study Organizational Recodify Title 12"

DEADLINES: Finalize by: FEB 1, 2016 File by: FEB 3, 2016

A BILL FOR AN ACT

101 CONCERNING A STUDY OF AN ORGANIZATIONAL RECODIFICATION OF
102 TITLE 12 OF THE COLORADO REVISED STATUTES GOVERNING
103 THE REGULATION OF PROFESSIONS AND OCCUPATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Committee on Legal Services. The bill directs the office of legislative legal services, overseen by the committee on legal services, to conduct a study of an organizational recodification of title 12 of the Colorado Revised Statutes. In conducting the study, the office must solicit input, including regarding the potential fiscal impacts of a recodification,

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

from the judicial department, state agencies, local governments, and other entities with regulation and enforcement responsibilities established by provisions of the title _____ as well as from representatives of the regulated professions and occupations and from the public. The office must periodically report to the committee about the status of the study.

The bill requires the committee to determine by December 31, 2017, whether to direct the office to present proposed legislation to the committee for an organizational recodification _____. The proposed recodification should be largely organizational and nonsubstantive, including only those substantive provisions necessary to promote the public purposes of an organizational recodification, such as changes that will make similar but repetitive provisions uniform and capable of consolidation and changes that will eliminate archaic or obsolete provisions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 2-3-510 as
3 follows:

4 **2-3-510. Study regarding an organizational recodification of**
5 **title 12 of the Colorado Revised Statutes - legislative declaration -**
6 **repeal.** (1) THE GENERAL ASSEMBLY HEREBY:

7 (a) FINDS THAT TITLE 12 OF THE COLORADO REVISED STATUTES,
8 ENTITLED "PROFESSIONS AND OCCUPATIONS":

9 (I) LACKS A COHERENT STRUCTURE AMONG ITS ARTICLES,
10 INCLUDING TWO GROUPINGS OF ARTICLES ENTITLED "GENERAL" THAT ARE
11 SEPARATED BY A GROUPING OF "HEALTH CARE" ARTICLES, AND A LARGE
12 PERCENTAGE OF ARTICLES THAT HAVE EITHER BEEN REPEALED OR BEEN
13 CODIFIED WITH A DECIMAL NUMBER;

14 (II) LACKS A TRUE "COMMON PROVISIONS" ARTICLE RESULTING IN
15 THE RECURRENCE OF IDENTICAL OR NEARLY IDENTICAL PROVISIONS
16 THROUGHOUT THE TITLE; AND

17 (III) INCLUDES NUMEROUS ARTICLES THAT DO NOT STRICTLY

1 RELATE TO THE REGULATION OF A PROFESSION OR OCCUPATION AND THAT
2 COULD BE MORE APPROPRIATELY CODIFIED ELSEWHERE IN THE COLORADO
3 REVISED STATUTES;

4 (b) DETERMINES THAT THESE SHORTCOMINGS MAKE THE TITLE
5 UNNECESSARILY VOLUMINOUS, REPETITIVE, AND DIFFICULT TO AMEND,
6 UNDERSTAND, AND ADMINISTER; AND

7 (c) DECLARES THAT IT IS IN THE PUBLIC INTEREST TO STUDY AN
8 ORGANIZATIONAL RECODIFICATION OF TITLE 12.

9 (2) (a) BEGINNING IN THE 2016 INTERIM, THE OFFICE, OVERSEEN
10 BY THE COMMITTEE, SHALL STUDY AN ORGANIZATIONAL RECODIFICATION
11 OF TITLE 12 OF THE COLORADO REVISED STATUTES. IN CONDUCTING THE
12 STUDY, THE OFFICE SHALL SOLICIT INPUT, INCLUDING INPUT REGARDING
13 UNOFFICIAL ESTIMATES OF THE FISCAL IMPACT THAT AN ORGANIZATIONAL
14 RECODIFICATION OF TITLE 12 MIGHT ENTAIL, FROM:

15 (I) THE JUDICIAL BRANCH AND THE FOLLOWING STATE AGENCIES
16 THAT HAVE REGULATORY AUTHORITY ESTABLISHED IN TITLE 12:
17 AGRICULTURE, HIGHER EDUCATION, LAW, PUBLIC HEALTH AND
18 ENVIRONMENT, REGULATORY AGENCIES, REVENUE, STATE, AND ANY
19 OTHER INTERESTED STATE AGENCY OR OFFICE;

20 (II) LOCAL GOVERNMENTS AND ANY OTHER ENTITY THAT HAS
21 REGULATORY AUTHORITY ESTABLISHED IN TITLE 12;

22 (III) REPRESENTATIVES FROM THE PROFESSIONS AND OCCUPATIONS
23 REGULATED BY TITLE 12; AND

24 (IV) THE PUBLIC.

25 _____

26 (b) THE OFFICE SHALL PROVIDE PERIODIC UPDATES TO THE
27 COMMITTEE REGARDING THE STUDY AND, NO LATER THAN DECEMBER 31,

1 2017, THE COMMITTEE SHALL DETERMINE WHETHER TO DIRECT THE OFFICE
2 TO PROVIDE TO THE COMMITTEE PROPOSED LEGISLATION FOR AN
3 ORGANIZATIONAL RECODIFICATION OF TITLE 12.

4 (3) THE STUDY IS SUBJECT TO THE FOLLOWING GUIDELINES:

5 (a) FUNDAMENTALLY, THE RECODIFICATION SHOULD BE
6 ORGANIZATIONAL AND NONSUBSTANTIVE, AND ANY SUBSTANTIVE
7 PROVISIONS THAT MAY BE INCLUDED IN THE PROPOSED LEGISLATION
8 SHOULD BE STRICTLY LIMITED TO THOSE THAT ARE NECESSARY TO
9 PROMOTE THE PUBLIC PURPOSES OF AN ORGANIZATIONAL RECODIFICATION
10 AS SPECIFIED IN THIS SECTION, SUCH AS:

11 (I) CONFORMING SIMILAR PROVISIONS TO ACHIEVE UNIFORMITY,
12 ELIMINATE REDUNDANCY, AND ALLOW FOR THE CONSOLIDATION OF
13 COMMON PROVISIONS; AND

14 (II) ELIMINATING PROVISIONS THAT ARE ARCHAIC OR OBSOLETE
15 _____;

16 (b) THE OFFICE SHOULD ENDEAVOR TO USE ACTIVE VOICE,
17 AUTHORITY VERBS, GENDER-NEUTRAL LANGUAGE, AND PEOPLE-FIRST
18 LANGUAGE; AND

19 (c) THE EXECUTIVE AND JUDICIAL BRANCHES OF COLORADO STATE
20 GOVERNMENT AND THE LOCAL GOVERNMENTS AND OTHER ENTITIES WITH
21 REGULATORY AUTHORITY ESTABLISHED IN TITLE 12 ARE ENCOURAGED TO
22 PARTICIPATE IN THE STUDY AND COOPERATE WITH THE OFFICE.

23 (4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2018.

24 **SECTION 2. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.