

Colorado Title Board Policies and Procedures

Established in Colorado Revised Statute § 1-40-106

The Title Board (“Title Board” or “Board”) adopts these written policies and procedures as required by § 24-3.7-102, C.R.S.

Statutory authority.

The Title Board is convened by the Secretary of State as required by § 1-40-106, C.R.S. Its activities are governed by §§ 1-40-105.5, -106, -106.5 and -107, C.R.S., and by article V, section 1 and article X, section 20(3)(C) of the Colorado Constitution. Nothing in this document is intended to be contrary to these, or any, statutes, constitutional provisions, or relevant judicial decisions. To the extent there is any inconsistency, the statutes, Constitution, and judicial decisions govern.

Purpose.

The Title Board is established by statute to fix a title for initiative petitions for proposed laws or constitutional amendments that are submitted to the Colorado Secretary of State for title setting.

For each proposed initiative, the Title Board: (1) determines whether the initiative contains a single subject, as required by law, and whether the Title Board otherwise has jurisdiction under §§ 1-40-105(2) and 1-40-106(4)(d), C.R.S., to set a title, and if so; (2) sets a title for the proposal that is brief and that correctly and fairly expresses the true intent and meaning of the initiative. For proposed initiatives that seek to amend the Colorado Constitution, the Title Board shall also determine whether the amendment adds language to the Constitution (which requires approval by 55% of voters), or whether the amendment is limited to repealing, in whole or in part, any provision of the Constitution (which requires approval by 50% of voters).

The Title Board may not refuse to set a title because it believes a proposed initiative is unconstitutional or lacks merit.

Conflicts of interest.

The Title Board is required by law to consist of the Attorney General, the Secretary of State, and the Director of the Office of Legislative Legal Services, or their designees. The individuals serving on the Title Board shall use their best efforts to identify any conflicts of interest prior to a Title Board meeting so that a different designee who does not have a conflict may be identified and hear the matter in question.

Every designee who serves on the Title Board shares responsibility for maintaining public trust in the Title Board and its proceedings. This responsibility for fairness and integrity must be fulfilled through the exercise of one's own good judgment. If a matter that raises a conflict of interest for any designee serving as a Board member comes before the Board, the Board member shall disclose the conflict of interest upon becoming aware of it and shall abstain from further participation and voting on the matter.

Each designee who serves on the Title Board has sole discretion to determine whether such a conflict of interest exists. The Board shall neither hear nor decide any motion from any individual seeking recusal of a designee serving on the Title Board due to an alleged conflict of interest, nor will the Board itself determine as a body that a designee has a conflict of interest. Prior involvement in, or advocacy concerning, the subject matter of an initiative before the Board is not by itself a conflict of interest.

Open records and open meetings.

The Board's activities are subject to the Colorado Open Records Act, § 24-72-201 *et seq.*, C.R.S., and the Open Meetings Law, § 24-6-402, C.R.S. Consistent with those laws, the Board's activities generally will be conducted in public pursuant to public notice, unless the Open Meetings Law permits particular matters to be discussed in executive session. The Board's records are generally subject to the Colorado Open Records Act, subject to any exclusions from disclosure contained in that Act.

Secretary of State staff.

Staff from the Secretary of State's office shall provide support to the Title Board, including managing filings, certifying necessary records, and recordkeeping. Staff may be reached at 303-894-2200 and at initiatives@coloradosos.gov

Meetings.

The Board generally meets on the first and third Wednesdays of each month when one or more initiatives or motions for rehearing have been filed with the Board. These meetings may be referred to as "meetings" or as "hearings" interchangeably. For each two-year general election cycle, the Board can first meet on the first Wednesday in December after the general election, and its last meeting for initial hearings on initiatives must take place no later than the third Wednesday in April of the year in which the measure is to be voted on. In other words, for a measure arising under the Taxpayer's Bill of Rights that will be voted on at the November odd-numbered-year election, the final Title Board meeting is the third Wednesday in April of that year; for all other measures, the final Board meeting is the third Wednesday in April of the even-numbered-year in which the measure will be voted on.

The Title Board has discretion to set the time for its meetings. The Title Board may limit time available for testimony and may decide to adjourn a Title Board meeting to the next available day because a meeting is running long or for any other reason. Title Board meetings are broadcast live over the internet.

Appearance of designated representatives.

For the Title Board to set a title for a proposed initiative or hear a motion for rehearing, both designated representatives must be present at the Title Board meeting and remain throughout all discussion and Board action concerning their initiative. The designated representatives must complete a notarized affidavit as required by § 1-40-106(4), C.R.S., the first time they appear at a Title Board meeting.

If either or both designated representatives fail to appear, the matter (whether an initial title setting or a rehearing) will be held over to the next Title Board meeting. If either or both designated representatives fail to appear for the next Title Board meeting, the

Board may choose to hold the matter over for another meeting. The Board may also deem the initiative to be withdrawn, which would require resubmission of the proposed initiative to the directors of the Legislative Council and the Office of Legislative Legal Services for review and comment.

If a designated representative withdraws, the representative cannot be replaced, and the Board will deem the initiative to be withdrawn.

Timing of submission.

To be considered at a Title Board meeting, a full and complete draft of an initiative, as described in paragraph 9, must be submitted to the Secretary of State by 3 p.m. twelve days prior to the meeting (i.e. two Fridays before the meeting). Compliance with the 3 p.m. deadline will be demonstrated based on (a) for emails, the time stamp of the email in the Secretary of State's records, (b) for hand deliveries, the time stamp affixed by the Secretary of State's office, and (c) for postal mail, items received on the day of the filing deadline. Any initiative submitted after the 3 p.m. deadline will automatically be added to the agenda for the following Title Board meeting.

If proponents submit the draft of an initiative on the twelfth day before the Title Board's final hearing in April, but after 3 p.m., the Title Board may consider whether good cause exists to waive the 3 p.m. requirement to protect the people's fundamental constitutional right of initiative.¹

Contents of submission to the Secretary of State.

By statute, proponents must submit the following to the Secretary of State: (a) the original typewritten draft submitted to the Legislative Council and the Office of Legislative Legal Services; (b) a copy of the amended draft, if any, with all changes from the original to final draft highlighted or otherwise indicated; and (c) if there is an amended draft, a final draft with the final language for printing. The final draft should not

¹ See *In re Title, Ballot Title & Submission Clause for 1999-2000 No. 255*, 4 P.3d 485, 492 (Colo. 2000) ("The respective deadlines in sections 1-40-106(1) and 1-40-106(3)(a), C.R.S. must be viewed in the context of the people's fundamental constitutional right of initiative.").

include a proposed title. All documents must be received by the Secretary of State's office by the deadline specified in paragraph 8.²

Proponents may make changes to their draft *after* and *in response to* review and comment but before submission to the Title Board. However, if a substantial amendment is made to the draft and that amendment is not in direct response to a comment from the Directors of Legislative Counsel or the Office of Legislative Legal Services, the petition must be resubmitted for review and comment before being heard by the Title Board. If the Title Board finds an amended draft contains substantial amendments that are not in direct response to the comments, the Title Board will not set a title for the draft.

Amendments to the proposed initiative after submission.

No changes to a draft initiative may be made after the deadline for submission to the Secretary of State and prior to the Title Board meeting to consider the proposed initiative. During the Title Board hearing, the proponents may make non-substantive technical or grammatical revisions to their submission, provided the Title Board agrees that the revisions are non-substantive. If any such non-substantive changes are made, the proponents must submit an updated amended and final text to the Secretary of State no later than 48 hours after the end of the Title Board meeting.

Motion for rehearing.

Any person may file a motion for rehearing for any of the reasons identified in § 1-40-107(1), C.R.S. A motion for rehearing must be submitted no later than seven calendar days after the Title Board's decision. A timely filed motion for rehearing will be heard at the next Title Board meeting. The person filing the motion for rehearing does not need to appear at the rehearing, but the Board encourages either the movant or counsel representing the movant to appear. Both designated representatives of the proponents

² See *Matter of Title, Ballot Title & Submission Clause for 1997-98 No. 109*, 962 P.2d 252 (Colo. 1998) (affirming "without opinion" Title Board's determination that it lacked jurisdiction to set title when proponents failed to include a redline).

of an initiative must appear and remain for the duration of any rehearing concerning the initiative.

A motion for rehearing must be typewritten and must set forth, with particularity, the grounds for rehearing. Such a motion does not need to be long but must identify the reasons for rehearing so as to make clear to the Board, the designated representatives, and any interested members of the public why rehearing is sought and what will be argued at the rehearing. For example, if the motion claims that the petition contains more than one subject, the motion must identify the additional subject(s) and include a brief explanation of the reasons the movant believes they constitute additional subjects; if the motion claims that the title is unfair or misleading, the motion must identify the specific wording that is challenged and explain why it is unfair or misleading. The Board may deny, without further consideration, any motion for rehearing that does not set forth the grounds for rehearing with particularity.

Only one rehearing per initiative may be held, and the Title Board will consider all properly filed motions for rehearing at that rehearing. Parties opposing a motion for rehearing may submit a response for the Title Board's consideration before the rehearing occurs. Any decision made by the Title Board at a rehearing is not subject to further motions for rehearing.³

Resubmissions to meet single subject.

If the Title Board determines that it cannot set a title because the proposed initiative contains more than one subject, the proponents may eliminate provisions without making other changes in an attempt to comply with the single subject requirement and, as permitted by article V, section 1(5.5) of the Colorado Constitution, resubmit the proposal to the Title Board for a new hearing without going through the review and comment process specified in §1-40-105, C.R.S. The Title Board will consider such a direct resubmission unless it determines that the revisions are so substantial that

³ See *Matter of Title, Ballot Title & Submission Clause for 2019-2020 #74*, 2020 CO 5.

additional review and comment would be in the public interest. The Title Board will not consider a resubmission and a motion for rehearing at the same time.

Additionally, the resubmission must conform with the submission and timing requirements contained in § 1-40-106(1) and paragraph 8 above—in other words, it must be submitted at least 12 days before the hearing at which it is to be considered. The resubmission should also comply with the filing requirements of § 1-40-105(4) and paragraph 9 above, with an original draft (consisting of the draft first submitted to the Board but denied title setting), an amended draft showing the changes from the original, and a final draft.

Permanent withdrawal of an initiative petition.

One or both designated representatives may permanently withdraw an initiative petition at any time by submitting a statement of withdrawal signed by one or both of the designated representatives or by the designated representatives' counsel or by making a statement of withdrawal on the record at a hearing or rehearing on the initiative. A withdrawal cannot be revoked. Once an initiative petition is withdrawn, the Title Board will not consider that initiative petition.