

ASSEMBLY BILL NO. 209—ASSEMBLYWOMAN SHELTON

MARCH 2, 2015

Referred to Committee on Legislative Operations and Elections

SUMMARY—Makes various changes relating to elections.
(BDR 24-816)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§§ 7, 8, 9)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to elections; requiring county and city clerks to establish and maintain audit trails for each process involved in the conduct of an election; requiring an audit of each election; setting forth security requirements for certain operating systems, computer hardware and software used in the conduct of an election; revising provisions relating to an election recount; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 **Section 7** of this bill requires each county clerk and city clerk to establish and
- 2 maintain an audit trail for each process involved in the conduct of an election.
- 3 **Section 6** of this bill defines a “process involved in the conduct of an election.”
- 4 **Section 7** also sets forth requirements for the audit trail, including that the audit
- 5 trail must include detailed descriptions of and information concerning transactions
- 6 involving various books, papers, documents and election equipment.
- 7 **Section 8** of this bill requires each county and city clerk to contract with a
- 8 certified fraud examiner or certified public accountant to perform an audit of each
- 9 election to: (1) determine compliance with all applicable laws and regulations; and
- 10 (2) detect any fraud or irregularity in the conduct of the election. **Section 8**
- 11 requires: (1) the audit to be completed not later than 30 days after each election; (2)
- 12 the certified fraud examiner or certified public accountant to submit an audit report
- 13 not later than 30 days after the completion of the audit; and (3) the county or city
- 14 clerk to publish the audit report.
- 15 **Section 9** of this bill requires any operating system, computer hardware or
- 16 software used in a process involved in the conduct of an election to be protected by
- 17 a hardware device or software program that restricts access to the hardware or



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18 software. The device or program must detect and create a record of attempts to
19 access the hardware or software and of transmissions of data or information from
20 the hardware or software.

21 **Section 10** of this bill prohibits the Secretary of State, county clerk, city clerk
22 and any other official or employee responsible for acquiring election equipment
23 from acquiring an operating system, computer hardware or software unless the
24 design of the operating system, hardware or software enables the Secretary of State,
25 clerks or other officials or employees to test and verify the effectiveness, reliability
26 and security of the operating system, hardware or software.

27 Existing law provides a Voters' Bill of Rights. (NRS 293.2546) **Section 12** of
28 this bill provides that, as part of the Bill of Rights, each voter has the right to a
29 trustworthy elections system.

30 Existing law authorizes defeated candidates and voters to demand and receive a
31 recount of a vote by filing a demand and depositing in advance the estimated costs
32 of the recount. (NRS 293.403) In counties or cities using a mechanical voting
33 system, a recount begins in the county or city with a sample of ballots being
34 recounted. If the sample shows a discrepancy of at least 1 percent or five votes,
35 whichever is greater, from the original total count of ballots in the county or city,
36 the county or city clerk may order a recount of all the ballots. (NRS 293.404)

37 **Section 13** of this bill changes that authorization to a requirement that the county or
38 city clerk order a full recount and also changes the triggering standard, requiring
39 the full recount if the initial recount shows a discrepancy of at least 1 percent or
40 five votes, whichever is less.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 293 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 6, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *The terms "book," "document" and "paper" include*
9 *the electronic versions of any book, document or paper. The terms*
10 *do not include ballots.*

11 **Sec. 4.** *"Election" means any primary election, primary city*
12 *election, general election, general city election or special election.*

13 **Sec. 5.** *"Election equipment" means any instrument,*
14 *equipment or program used in a process involved in the conduct of*
15 *an election, including, without limitation:*

- 16 1. *A mechanical recording device.*
- 17 2. *Any operating system, computer hardware or software.*
- 18 3. *Any ballot box or other container or device used to*
19 *transport or store ballots pursuant to this title.*
- 20 ↪ *The term does not include ballots.*



1 **Sec. 6. “Process involved in the conduct of an election”**
2 *means a responsibility or duty of a person relating to an election*
3 *which is required by law, including, without limitation:*

- 4 1. *Registering persons to vote;*
- 5 2. *Creating and maintaining registers and rosters;*
- 6 3. *Distributing ballots for the election, including, without*
7 *limitation, sample ballots, paper ballots and absent ballots;*
- 8 4. *Counting ballots; and*
- 9 5. *Reporting the results of an election.*

10 **Sec. 7. 1. Each county clerk and city clerk shall establish**
11 *and maintain an audit trail for each process involved in the*
12 *conduct of an election.*

13 2. *The audit trail must provide evidence of:*

14 (a) *Each transaction involving a book, document or paper,*
15 *including, without limitation, a description of the transaction, the*
16 *date and time of the transaction, the purpose of the transaction,*
17 *the authority for each person involved in the transaction to be*
18 *involved in the transaction and the name and any other relevant*
19 *identifying information of each person involved in the transaction.*
20 *For the purposes of this paragraph, “transaction” includes,*
21 *without limitation, any change made to the contents of a book,*
22 *document or paper.*

23 (b) *Each use of election equipment and each instance of any*
24 *person having access to election equipment, including, without*
25 *limitation, a description of the activity or access, the date and time*
26 *of the activity or access, the purpose of the activity or access, the*
27 *name and any other relevant identifying information of each*
28 *person involved in the activity or access, the authority for each*
29 *such person to be involved in the activity or access and the*
30 *software program or command, if any, used to begin the activity or*
31 *access. For the purposes of this paragraph, “having access to*
32 *election equipment” does not include the process of a voter*
33 *marking or casting a ballot.*

34 **Sec. 8. 1. An audit of each election must be conducted in**
35 *accordance with this section to:*

36 (a) *Determine compliance with all applicable laws and*
37 *regulations; and*

38 (b) *Detect any fraud or irregularity in the conduct of the*
39 *election.*

40 2. *Except as otherwise provided in subsection 3, to perform*
41 *the audit required by this section of a:*

42 (a) *Primary election, general election or, except as otherwise*
43 *provided in paragraph (b), a special election, each county clerk*
44 *shall enter into a contract with a certified fraud examiner.*



1 (b) *Primary city election, general city election or a special*
2 *election for a city office, each city clerk shall enter into a contract*
3 *with a certified fraud examiner.*

4 *↳ No contract entered into by a county clerk or city clerk with a*
5 *certified fraud examiner or a certified public accountant pursuant*
6 *to this section may be for a period of more than 3 years.*

7 3. *If no certified fraud examiner is available to perform an*
8 *audit required by this section, the county clerk or city clerk, as*
9 *applicable, may contract with a certified public accountant to*
10 *perform the audit.*

11 4. *An audit performed pursuant to this section must, without*
12 *limitation:*

13 (a) *Examine, without limitation:*

14 (1) *The security of ballots, books, documents, papers and*
15 *election equipment used during the conduct of the election.*

16 (2) *The qualifications of each person who had access to*
17 *ballots, books, documents, papers and election equipment used*
18 *during the conduct of the election.*

19 (3) *Compliance with and the effectiveness of every policy,*
20 *procedure and protocol of the county clerk or city clerk, as*
21 *applicable, related to the conduct of the election.*

22 (b) *Be conducted in a manner that enables the certified fraud*
23 *examiner or certified public accountant who conducts the audit to*
24 *determine whether any error occurred during the conduct of the*
25 *election and, if so, whether the error was caused by a person or a*
26 *failure of election equipment to operate as designed, programmed*
27 *or otherwise intended.*

28 5. *A person shall not refuse to allow a certified fraud*
29 *examiner or certified public accountant who conducts an audit*
30 *pursuant to this section to inspect any book, document, paper or*
31 *election equipment.*

32 6. *The audit required by this section must be completed not*
33 *later than 30 days after each election. The certified fraud*
34 *examiner or certified public accountant who performs the audit*
35 *shall submit an audit report to the county clerk or city clerk, as*
36 *applicable, not later than 60 days after the election. The county*
37 *clerk or city clerk shall make the audit report available to the*
38 *public, including, without limitation, by posting the audit report on*
39 *the Internet website of the county clerk or city clerk, as applicable.*

40 **Sec. 9.** *Any operating system, computer hardware or*
41 *software that is used in a process involved in the conduct of an*
42 *election must be protected by a device or program that:*

43 1. *Restricts access to the operating system, hardware or*
44 *software to persons authorized to access the operating system,*
45 *hardware or software.*



1 2. *Detects and creates a record of any attempt to access the*
2 *operating system, hardware or software by a person who is not*
3 *authorized to access the operating system, hardware or software.*
4 *The record must include the date and time of the attempted access*
5 *and any available information about the source of the attempted*
6 *access.*

7 3. *Detects and creates a record of each transmission of data*
8 *or information from the operating system, hardware or software.*
9 *The record must include the date and time of the transmission and*
10 *any available information about the recipient of the transmission.*

11 **Sec. 10.** *The Secretary of State, each county clerk and city*
12 *clerk, and any other official or employee responsible for acquiring*
13 *election equipment shall not acquire an operating system,*
14 *computer hardware or software unless the design of the operating*
15 *system, hardware or software enables the Secretary of State,*
16 *county clerk, city clerk or other official or employee, as applicable,*
17 *to test and verify the effectiveness, reliability and security of the*
18 *operating system, hardware or software.*

19 **Sec. 11.** *The Secretary of State shall adopt regulations*
20 *necessary to carry out the provisions of sections 2 to 11, inclusive,*
21 *of this act.*

22 **Sec. 12.** NRS 293.2546 is hereby amended to read as follows:
23 293.2546 The Legislature hereby declares that each voter has
24 the right:

25 1. To receive and cast a ballot that:

26 (a) Is written in a format that allows the clear identification of
27 candidates; and

28 (b) Accurately records the voter's preference in the selection of
29 candidates.

30 2. To have questions concerning voting procedures answered
31 and to have an explanation of the procedures for voting posted in a
32 conspicuous place at the polling place.

33 3. To vote without being intimidated, threatened or coerced.

34 4. To vote on election day if the voter is waiting in line at his
35 or her polling place to vote before 7 p.m. and the voter has not
36 already cast a vote in that election.

37 5. To return a spoiled ballot and is entitled to receive another
38 ballot in its place.

39 6. To request assistance in voting, if necessary.

40 7. To a sample ballot which is accurate, informative and
41 delivered in a timely manner.

42 8. To receive instruction in the use of the equipment for voting
43 during early voting or on election day.

44 9. To have nondiscriminatory equal access to the elections
45 system, including, without limitation, a voter who is elderly,



1 disabled, a member of a minority group, employed by the military or
2 a citizen who is overseas.

3 10. To have a uniform, statewide standard for counting and
4 recounting all votes accurately.

5 11. To have complaints about elections and election contests
6 resolved fairly, accurately and efficiently.

7 ***12. To have a trustworthy election system.***

8 **Sec. 13.** NRS 293.404 is hereby amended to read as follows:

9 293.404 1. Where a recount is demanded pursuant to the
10 provisions of NRS 293.403, the:

11 (a) County clerk of each county affected by the recount shall
12 employ a recount board to conduct the recount in the county, and
13 shall act as chair of the recount board unless the recount is for the
14 office of county clerk, in which case the registrar of voters of the
15 county, if a registrar of voters has been appointed for the county,
16 shall act as chair of the recount board. If a registrar of voters has not
17 been appointed for the county, the chair of the board of county
18 commissioners, if the chair is not a candidate on the ballot, shall act
19 as chair of the recount board. If the recount is for the office of
20 county clerk, a registrar of voters has not been appointed for the
21 county and the chair of the board of county commissioners is a
22 candidate on the ballot, the chair of the board of county
23 commissioners shall appoint another member of the board of county
24 commissioners who is not a candidate on the ballot to act as chair of
25 the recount board. A member of the board of county commissioners
26 who is a candidate on the ballot may not serve as a member of the
27 recount board.

28 (b) City clerk shall employ a recount board to conduct the
29 recount in the city, and shall act as chair of the recount board unless
30 the recount is for the office of city clerk, in which case the mayor of
31 the city, if the mayor is not a candidate on the ballot, shall act as
32 chair of the recount board. If the recount is for the office of city
33 clerk and the mayor of the city is a candidate on the ballot, the
34 mayor of the city shall appoint another member of the city council
35 who is not a candidate on the ballot to act as chair of the recount
36 board. A member of the city council who is a candidate on the ballot
37 may not serve as a member of the recount board.

38 2. Each candidate for the office affected by the recount and the
39 voter who demanded the recount, if any, may be present in person or
40 by an authorized representative, but may not be a member of the
41 recount board.

42 3. Except in counties or cities using a mechanical voting
43 system, the recount must include a count and inspection of all
44 ballots, including rejected ballots, and must determine whether those
45 ballots are marked as required by law.



1 4. If a recount is demanded in a county or city using a
2 mechanical voting system, the person who demanded the recount
3 shall select the ballots for the office or ballot question affected from
4 5 percent of the total number of precincts for that particular office or
5 ballot question, but in no case fewer than three precincts, after
6 notification to each candidate for the office or the candidate's
7 authorized representative.

8 5. The recount board shall examine the selected ballots,
9 including any duplicate or rejected ballots, shall determine whether
10 the ballots have been voted in accordance with this title and shall
11 recount the valid ballots in the same manner in which the ballots
12 were originally tabulated. If the recount of the selected ballots for all
13 5 percent of the precincts selected shows a total combined
14 discrepancy of all precincts selected equal to or greater than 1
15 percent or five votes, whichever is ~~greater,~~ *less*, for the candidate
16 demanding the recount or the candidate who won the election
17 according to the original canvass of the returns, or in favor of or
18 against a ballot question, according to the original canvass of the
19 returns, *the person who demanded the recount is entitled to the*
20 *recount and* the county or city clerk, as applicable, ~~shall determine~~
21 ~~whether the person who demanded the recount is entitled to a~~
22 ~~recount and, if so,~~ shall order a recount of all the ballots for that
23 office or ballot question.

24 6. The county or city clerk shall unseal and give to the recount
25 board all ballots to be counted.

26 7. In the case of a demand for a recount affecting more than
27 one county, including, without limitation, a statewide office or a
28 ballot question, the demand must be made to the Secretary of State.
29 The person who demanded the recount shall select the ballots for the
30 statewide office or ballot question affected from 5 percent of the
31 total number of precincts for that particular office or ballot question
32 after notification to each candidate for the office or the candidate's
33 representative. The Secretary of State shall notify the county clerks
34 of the 5 percent of statewide precincts selected by the person who
35 demanded the recount to examine the ballots in accordance with the
36 provisions of this section and to notify the Secretary of State of the
37 results of the recount in their respective precincts. If the separate
38 examinations, when combined, show a total discrepancy equal to or
39 greater than 1 percent for the candidate demanding the recount or
40 the candidate who won the election, according to the original
41 canvass of the returns, or in favor of or against a ballot question,
42 according to the original canvass of the returns, the Secretary of
43 State shall determine whether the person who demanded the recount
44 is entitled to a recount and, if so, shall order the county or city clerk,



1 as applicable, to recount all the ballots for that office or ballot
2 question.

3 8. The Secretary of State may adopt regulations to carry out the
4 provisions of this section.

5 **Sec. 14.** The provisions of NRS 354.599 do not apply to any
6 additional expenses of a local government that are related to the
7 provisions of this act.

8 **Sec. 15.** This act becomes effective:

9 1. Upon passage and approval for the purpose of adopting any
10 regulations and performing any other preparatory administrative
11 tasks necessary to carry out the provisions of this act; and

12 2. On October 1, 2015, for all other purposes.

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