

ASSEMBLY BILL NO. 418—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

MARCH 27, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to elections.
(BDR 24-750)

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

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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; providing that a voter may not be compelled to reveal under oath how he or she voted at any election; providing for the inspection during a contested election of certain records printed on paper of ballots voted by using a mechanical recording device; revising the method of counting ballots during a recount of an election; amending provisions specifying grounds upon which any election may be contested; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, in certain proceedings, a person has a privilege to refuse to
2 disclose the tenor of his or her vote at an election unless the vote was cast illegally.
3 (NRS 47.020, 49.315; *Thomas v. Hardwick*, 126 Nev. 142, 146 n.4 (2010) (noting
4 that under the privilege for voters recognized by NRS 49.315, potential jurors
5 cannot be required to disclose how they voted on a particular ballot question))
6 **Section 1** of this bill supplements the privilege for voters recognized by existing
7 law and provides that, in addition to the right to claim the privilege for voters
8 recognized by existing law in applicable proceedings, a voter who casts a vote
9 legally at an election may not, in any other proceedings or circumstances, be
10 compelled to reveal under oath how he or she voted at the election, and the voter
11 has a privilege to refuse to disclose the tenor of his or her vote at the election.

12 Under existing law, voted ballots, rejected ballots, spoiled ballots, challenge
13 lists, certain records printed on paper of ballots voted by using a mechanical
14 recording device and stubs of ballots used must be deposited in the vaults of the
15 county clerk. The voted ballots are not subject to inspection by anyone, except in
16 cases of a contested election, and then only by the judge, body or board before
17 whom the election is being contested or by the parties to the contest, jointly,
18 pursuant to an order of such judge, body or board. (NRS 293.391) **Section 2** of this



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19 bill clarifies that records printed on paper of ballots voted by using a mechanical
20 recording device also are not subject to inspection by anyone, except in cases of a
21 contested election, and then only by the judge, body or board before whom the
22 election is being contested or by the parties to the contest, jointly, pursuant to an
23 order of such judge, body or board.

24 Under existing law, if a recount of an election in a county or city that uses a
25 mechanical voting system is demanded, or if a recount of an election affecting more
26 than one county is demanded, an initial recount is done of ballots from 5 percent of
27 the total number of precincts that voted in the election, or at least three precincts
28 that voted in the election. If the initial recount shows a discrepancy of at least 1
29 percent or five votes, whichever is greater, a full recount of all ballots at the
30 election for the office or ballot question is done. (NRS 293.404) **Section 3** of this
31 bill deletes the provisions requiring the initial recount of 5 percent, or at least three,
32 of the precincts that voted at the election. **Section 3** provides instead that all
33 recounts must include a count and inspection of all ballots. **Section 3** further
34 provides that all ballots must be recounted in the same manner in which the ballots
35 were originally tabulated.

36 **Section 4** of this bill amends provisions specifying grounds upon which any
37 election may be contested. (NRS 293.410)

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 a new section to read as follows:

3 *In addition to the right to claim the privilege for voters*
4 *recognized by NRS 49.315 in proceedings governed by title 4 of*
5 *NRS, a voter who casts a vote legally at an election may not, in*
6 *any other proceedings or circumstances, be compelled under oath*
7 *to reveal how he or she voted at the election, and the voter has a*
8 *privilege to refuse to disclose the tenor of his or her vote at the*
9 *election.*

10 **Sec. 2.** NRS 293.391 is hereby amended to read as follows:

11 293.391 1. The voted ballots, rejected ballots, spoiled ballots,
12 challenge lists, records printed on paper of voted ballots collected
13 pursuant to NRS 293B.400, and stubs of the ballots used, enclosed
14 and sealed, must, after canvass of the votes by the board of county
15 commissioners, be deposited in the vaults of the county clerk. The
16 records of voted ballots that are maintained in electronic form must,
17 after canvass of the votes by the board of county commissioners, be
18 sealed and deposited in the vaults of the county clerk. The tally lists
19 collected pursuant to ~~NRS 293B.400~~ *this title* must, after canvass
20 of the votes by the board of county commissioners, be deposited in
21 the vaults of the county clerk without being sealed. All materials
22 described by this subsection must be preserved for at least 22
23 months, and all such sealed materials must be destroyed
24 immediately after the preservation period. A notice of the
25 destruction must be published by the clerk in at least one newspaper



1 of general circulation in the county not less than 2 weeks before the
2 destruction.

3 2. Unused ballots, enclosed and sealed, must, after canvass of
4 the votes by the board of county commissioners, be deposited in the
5 vaults of the county clerk and preserved for at least the period
6 during which the election may be contested and adjudicated, after
7 which the unused ballots may be destroyed.

8 3. The rosters containing the signatures of those persons who
9 voted in the election and the tally lists deposited with the board of
10 county commissioners are subject to the inspection of any elector
11 who may wish to examine them at any time after their deposit with
12 the county clerk.

13 4. A contestant of an election may inspect all of the material
14 regarding that election which is preserved pursuant to subsection 1
15 or 2, except the voted ballots **† and records printed on paper of**
16 **voted ballots collected pursuant to NRS 293B.400 which are**
17 **deposited with the county clerk.**

18 5. The voted ballots **and records printed on paper of voted**
19 **ballots collected pursuant to NRS 293B.400 which are** deposited
20 with the county clerk are not subject to the inspection of anyone,
21 except in cases of a contested election, and then only by the judge,
22 body or board before whom the election is being contested, or by the
23 parties to the contest, jointly, pursuant to an order of such judge,
24 body or board.

25 **Sec. 3.** NRS 293.404 is hereby amended to read as follows:

26 293.404 1. Where a recount is demanded pursuant to the
27 provisions of NRS 293.403, the:

28 (a) County clerk of each county affected by the recount shall
29 employ a recount board to conduct the recount in the county, and
30 shall act as chair of the recount board unless the recount is for the
31 office of county clerk, in which case the registrar of voters of the
32 county, if a registrar of voters has been appointed for the county,
33 shall act as chair of the recount board. If a registrar of voters has not
34 been appointed for the county, the chair of the board of county
35 commissioners, if the chair is not a candidate on the ballot, shall act
36 as chair of the recount board. If the recount is for the office of
37 county clerk, a registrar of voters has not been appointed for the
38 county and the chair of the board of county commissioners is a
39 candidate on the ballot, the chair of the board of county
40 commissioners shall appoint another member of the board of county
41 commissioners who is not a candidate on the ballot to act as chair of
42 the recount board. A member of the board of county commissioners
43 who is a candidate on the ballot may not serve as a member of the
44 recount board.



1 (b) City clerk shall employ a recount board to conduct the
2 recount in the city, and shall act as chair of the recount board unless
3 the recount is for the office of city clerk, in which case the mayor of
4 the city, if the mayor is not a candidate on the ballot, shall act as
5 chair of the recount board. If the recount is for the office of city
6 clerk and the mayor of the city is a candidate on the ballot, the
7 mayor of the city shall appoint another member of the city council
8 who is not a candidate on the ballot to act as chair of the recount
9 board. A member of the city council who is a candidate on the ballot
10 may not serve as a member of the recount board.

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

15 3. ~~{Except in counties or cities using a mechanical voting~~
16 ~~system, the}~~ *The* recount must include a count and inspection of all
17 ballots, including rejected ballots, and must determine whether
18 ~~{those}~~ *all* ballots are marked as required by law.

19 ~~{4. If a recount is demanded in a county or city using a~~
20 ~~mechanical voting system, the person who demanded the recount~~
21 ~~shall select the ballots for the office or ballot question affected from~~
22 ~~5 percent of the total number of precincts for that particular office or~~
23 ~~ballot question, but in no case fewer than three precincts, after~~
24 ~~notification to each candidate for the office or the candidate's~~
25 ~~authorized representative.~~

26 ~~—5. The recount board shall examine the selected ballots,~~
27 ~~including any duplicate or rejected ballots, shall determine whether~~
28 ~~the ballots have been voted in accordance with this title and shall~~
29 ~~recount the valid ballots}~~ *All ballots must be recounted* in the same
30 manner in which the ballots were originally tabulated. ~~{If the~~
31 ~~recount of the selected ballots for all 5 percent of the precincts~~
32 ~~selected shows a total combined discrepancy of all precincts~~
33 ~~selected equal to or greater than 1 percent or five votes, whichever is~~
34 ~~greater, for the candidate demanding the recount or the candidate~~
35 ~~who won the election according to the original canvass of the~~
36 ~~returns, or in favor of or against a ballot question, according to the~~
37 ~~original canvass of the returns, the county or city clerk, as~~
38 ~~applicable, shall determine whether the person who demanded the~~
39 ~~recount is entitled to a recount and, if so, shall order a recount of all~~
40 ~~the ballots for that office or ballot question.~~

41 ~~—6.}~~ 4. The county or city clerk shall unseal and give to the
42 recount board all ballots to be counted.

43 ~~{7. In the case of a demand for a recount affecting more than~~
44 ~~one county, including, without limitation, a statewide office or a~~
45 ~~ballot question, the demand must be made to the Secretary of State.~~



1 ~~The person who demanded the recount shall select the ballots for the~~
2 ~~statewide office or ballot question affected from 5 percent of the~~
3 ~~total number of precincts for that particular office or ballot question~~
4 ~~after notification to each candidate for the office or the candidate's~~
5 ~~representative. The Secretary of State shall notify the county clerks~~
6 ~~of the 5 percent of statewide precincts selected by the person who~~
7 ~~demanded the recount to examine the ballots in accordance with the~~
8 ~~provisions of this section and to notify the Secretary of State of the~~
9 ~~results of the recount in their respective precincts. If the separate~~
10 ~~examinations, when combined, show a total discrepancy equal to or~~
11 ~~greater than 1 percent for the candidate demanding the recount or~~
12 ~~the candidate who won the election, according to the original~~
13 ~~c canvass of the returns, or in favor of or against a ballot question,~~
14 ~~according to the original canvass of the returns, the Secretary of~~
15 ~~State shall determine whether the person who demanded the recount~~
16 ~~is entitled to a recount and, if so, shall order the county or city clerk,~~
17 ~~as applicable, to recount all the ballots for that office or ballot~~
18 ~~question.~~

19 ~~—8.† 5.~~ The Secretary of State may adopt regulations to carry
20 out the provisions of this section.

21 **Sec. 4.** NRS 293.410 is hereby amended to read as follows:

22 293.410 1. A statement of contest shall not be dismissed by
23 any court for want of form if the grounds of contest are alleged with
24 sufficient certainty to inform the defendant of the charges the
25 defendant is required to meet.

26 2. An election may be contested upon any of the following
27 grounds:

28 (a) That the election board or any member thereof was guilty of
29 malfeasance.

30 (b) That a person who has been declared elected to an office was
31 not at the time of election eligible to that office.

32 (c) That ~~illegal~~ :

33 (1) *Illegal or improper* votes were cast and counted ~~for the~~
34 ~~defendant, which, if taken from the defendant, will reduce the~~
35 ~~number of the defendant's legal votes below the number necessary~~
36 ~~to elect~~ ;

37 (2) *Legal and proper votes were not counted; or*

38 (3) *A combination of the circumstances described in*
39 *subparagraphs (1) and (2) occurred,*

40 *↪ in an amount that is equal to or greater than the margin*
41 *between the contestant and the defendant* ~~†~~ , *or otherwise in an*
42 *amount sufficient to raise reasonable doubt as to the outcome of*
43 *the election.*



1 (d) That the election board, in conducting the election or in
2 canvassing the returns, made errors sufficient to change the result of
3 the election as to any person who has been declared elected.

4 (e) That the defendant *or any person acting, either directly or*
5 *indirectly, on behalf of the defendant* has given, or offered to give,
6 to any person ~~{a bribe}~~ *anything of value* for the purpose of
7 ~~{procuring his or her}~~ *manipulating or altering the outcome of the*
8 election.

9 (f) That there was a possible malfunction of any voting *device* or
10 *electronic tabulator*, counting device ~~{}~~ *or computer in a manner*
11 *sufficient to raise reasonable doubt as to the outcome of the*
12 *election.*

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