

Amendment No. 907

Senate Amendment to Assembly Bill No. 418 Second Reprint (BDR 24-750)

Proposed by: Senator Cannizzaro

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date			
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SES/JMK



Date: 5/23/2017

A.B. No. 418—Revises provisions relating to elections. (BDR 24-750)





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.

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

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

22 Under existing law, if a recount of an election in a county or city that uses a mechanical  
23 voting system is demanded, or if a recount of an election affecting more than one county is  
24 demanded, an initial recount is done of ballots from 5 percent of the total number of precincts  
25 that voted in the election, or at least three precincts that voted in the election. If the initial  
26 recount shows a discrepancy of at least 1 percent or five votes, whichever is greater, a full

27 recount of all ballots at the election for the office or ballot question is done. (NRS 293.404)  
28 **Section 3** of this bill deletes the provisions requiring the initial recount of 5 percent, or at least  
29 three, of the precincts that voted at the election. **Section 3** provides instead that all recounts  
30 must include a count and inspection of all ballots. **Section 3** further provides that all ballots  
31 must be recounted in the same manner in which the ballots were originally tabulated.

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

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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 thereto a new  
2 section to read as follows:

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

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

9 293.391 1. The voted ballots, rejected ballots, spoiled ballots, challenge  
10 lists, records printed on paper of voted ballots collected pursuant to NRS 293B.400,  
11 and stubs of the ballots used, enclosed and sealed, must, after canvass of the votes  
12 by the board of county commissioners, be deposited in the vaults of the county  
13 clerk. The records of voted ballots that are maintained in electronic form must, after  
14 canvass of the votes by the board of county commissioners, be sealed and deposited  
15 in the vaults of the county clerk. The tally lists collected pursuant to ~~NRS~~  
16 ~~293B.400~~ *this title* must, after canvass of the votes by the board of county  
17 commissioners, be deposited in the vaults of the county clerk without being sealed.  
18 All materials described by this subsection must be preserved for at least 22 months,  
19 and all such sealed materials must be destroyed immediately after the preservation  
20 period. A notice of the destruction must be published by the clerk in at least one  
21 newspaper of general circulation in the county not less than 2 weeks before the  
22 destruction.

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

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

31 4. A contestant of an election may inspect all of the material regarding that  
32 election which is preserved pursuant to subsection 1 or 2, except the voted ballots  
33 ~~+~~ *and records printed on paper of voted ballots collected pursuant to NRS*  
34 *293B.400 which are deposited with the county clerk.*

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

1       **Sec. 3.** NRS 293.404 is hereby amended to read as follows:  
2       293.404 1. Where a recount is demanded pursuant to the provisions of NRS  
3       293.403, the:

4       (a) County clerk of each county affected by the recount shall employ a recount  
5       board to conduct the recount in the county, and shall act as chair of the recount  
6       board unless the recount is for the office of county clerk, in which case registrar  
7       of voters of the county, if a registrar of voters has been appointed for the county,  
8       shall act as chair of the recount board. If a registrar of voters has not been appointed  
9       for the county, the chair of the board of county commissioners, if the chair is not a  
10      candidate on the ballot, shall act as chair of the recount board. If the recount is for  
11      the office of county clerk, a registrar of voters has not been appointed for the  
12      county and the chair of the board of county commissioners is a candidate on the  
13      ballot, the chair of the board of county commissioners shall appoint another  
14      member of the board of county commissioners who is not a candidate on the ballot  
15      to act as chair of the recount board. A member of the board of county  
16      commissioners who is a candidate on the ballot may not serve as a member of the  
17      recount board.

18      (b) City clerk shall employ a recount board to conduct the recount in the city,  
19      and shall act as chair of the recount board unless the recount is for the office of city  
20      clerk, in which case the mayor of the city, if the mayor is not a candidate on the  
21      ballot, shall act as chair of the recount board. If the recount is for the office of city  
22      clerk and the mayor of the city is a candidate on the ballot, the mayor of the city  
23      shall appoint another member of the city council who is not a candidate on the  
24      ballot to act as chair of the recount board. A member of the city council who is a  
25      candidate on the ballot may not serve as a member of the recount board.

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

29      3. ~~Except in counties or cities using a mechanical voting system, the~~ *The*  
30      recount must include a count and inspection of all ballots, including rejected  
31      ballots, and must determine whether ~~those~~ *all* ballots are marked as required by  
32      law.

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

39      ~~5. The recount board shall examine the selected ballots, including any~~  
40      ~~duplicate or rejected ballots, shall determine whether the ballots have been voted in~~  
41      ~~accordance with this title and shall recount the valid ballots] *All ballots must be*~~  
42      ~~*recounted* in the same manner in which the ballots were originally tabulated. If the~~  
43      ~~recount of the selected ballots for all 5 percent of the precincts selected shows a~~  
44      ~~total combined discrepancy of all precincts selected equal to or greater than 1~~  
45      ~~percent or five votes, whichever is greater, for the candidate demanding the recount~~  
46      ~~or the candidate who won the election according to the original canvass of the~~  
47      ~~returns, or in favor of or against a ballot question, according to the original canvass~~  
48      ~~of the returns, the county or city clerk, as applicable, shall determine whether the~~  
49      ~~person who demanded the recount is entitled to a recount and, if so, shall order a~~  
50      ~~recount of all the ballots for that office or ballot question.~~

51      ~~6.]~~ 4. The county or city clerk shall unseal and give to the recount board all  
52      ballots to be counted.

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

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

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

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

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

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

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

(c) That ~~illegal~~ :

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

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

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

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

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

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

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