

**MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-ninth Session
March 13, 2017**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Nicole J. Cannizzaro at 3:33 p.m. on Monday, March 13, 2017, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Tick Segerblom, Vice Chair
Senator Kelvin Atkinson
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Senator Patricia Farley, Senatorial District No. 8
Senator Pat Spearman, Senatorial District No. 1

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Brenda Erdoes, Legislative Counsel
Kevin Powers, Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

Todd Bailey, Nevada Accountability
Stacey Shinn, Progressive Leadership Alliance of Nevada
Janine Hansen, Nevada Families for Freedom
Joe Gloria, Registrar of Voters, Clark County
Matthew Tramp
Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State

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CHAIR CANNIZZARO:

I will open the hearing on Senate Joint Resolution (S.J.R.) 3.

SENATE JOINT RESOLUTION 3: Proposes to amend the Nevada Constitution to provide certain rights to voters. (BDR C-55)

SENATOR PAT SPEARMAN (Senatorial District 1):

Senate Joint Resolution 3 proposes an amendment to the Nevada Constitution to provide in the Constitution those voting rights set forth in *Nevada Revised Statutes* (NRS). Following the events of the 2000 general election, the U.S. Congress considered and eventually approved the Help America Vote Act (HAVA) of 2002. This Act, among other things, required states to post at each polling location a list of voter instructions and rights specifying certain guarantees afforded to the voter. These include the right for each voter to receive a sample ballot and to cast a provisional ballot, if necessary. The Act also provides for a uniform statewide standard for counting and recounting all votes accurately. Specifically, the Help America Vote Act of 2002, 52 USC section 21082 (b)(2) states:

... general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated ...

must be posted at every polling place. In accordance with HAVA, states across the Country developed and adopted these polling place posting requirements in their own statutes. Often referring to them as the voters' bill of rights.

Nevada adopted a voters' bill of rights in A.B. No. 235 of the 72nd Session. The measure was approved unanimously and is codified in NRS 293.2546. Many of the guarantees set forth in A.B. No. 235 of the 72nd Session in 2003 were long-standing provisions already in Nevada law.

Senate Joint Resolution 3 proposes to set forth the same voting rights in Article 2 of the Nevada Constitution. The provisions of this resolution state that each voter has the right: to receive and cast a ballot that is written in a format which allows the clear identification of candidates and accurately records the voter's selection of candidates; to have questions concerning voting procedures

answered and have an explanation of these procedures posted at a polling place, to vote without intimidation, threat or coercion; to vote on Election Day if the voter is waiting in line at the time his or her polling place closes; to request assistance in voting if necessary and receive a sample ballot that is accurate, informative and delivered in a timely manner; to receive instruction on the use of voting equipment; to have equal access to the elections system without discrimination, to be assured of a uniform statewide standard for counting and recounting all votes accurately; and to have complaints about elections and election contests resolved fairly, accurately and efficiently.

Many might wonder why these rights should be placed in the Nevada Constitution. Many of these rights are required under HAVA. They are important basic fundamentals of our democracy. Three amendments to the United States Constitution address voting rights and guarantee voting regardless of race, gender and economic status. The Twenty-sixth Amendment lowered the voting age to 18. If it is good enough to include these guarantees in the U.S. Constitution, it is good enough to include a voters' bill of rights in the Nevada Constitution.

This resolution is about protecting our democracy and the sacred act of voting. There have been many proposals over the years to amend the Nevada Constitution with various provisions that, arguably, should not be in the Constitution. There is a clear exception: Voting is a privilege which other nations have fought to obtain. Voting is at the heart of military missions to protect our democracy and the democracy of others around the world.

On March 7, 1965, also known as Bloody Sunday, 600 people began their march from Selma to Montgomery, Alabama. They marched across the Edmund Pettus Bridge to secure their right to vote. Some theorize that the violence they met might have persuaded then-President Lyndon B. Johnson to sign the Voting Rights Act in August 1965. The rights and guarantees associated with voting should be set forth in the Nevada Constitution. This is one constitutional amendment we can all enthusiastically support.

I served in the military for almost 30 years, and I was prepared to lay down my life for this fundamental right. I watched my grandmother as she went to the polls. Hers was the first generation in our family who lived in freedom. Her parents were slaves. Her mother was a full-blooded Cherokee. For my grandmother, voting was a privilege, but she told us it was our right and

responsibility. She held a bachelor's degree and two master's degrees and, yet, when she tried to vote she was asked to guess the number of jelly beans in a jar before receiving her ballot. The answer was irrelevant. They wanted to deny her the right to vote. The U.S. Constitution guaranteed her right to vote, but it took the Voting Rights Act of 1965 to declare explicitly this fundamental right for all Americans.

When you have had to fight for every right, you recognize the fundamental principles of having the ability to vote without encumbrance. Today, more than ever, it is important for us to protect those rights in the U.S. Constitution and in the Nevada Constitution.

SENATOR SETTELMAYER:

I do not disagree with the provisions of S.J.R. 3. There is an overall question of adding amendments to the Constitution. How do you address concerns about the large number of proposed amendments?

SENATOR SPEARMAN:

I have reviewed proposed legislation. Voting is as important, if not more important, than putting hunting and fishing in our Constitution. Voting rights are fundamental to our American democracy. I will support protecting voting rights if it takes 10 or 20 volumes. They must be enshrined in our Constitution. We need to say we will defend and protect citizens' right to vote.

SENATOR GANSERT:

Section 1A, subsection 9 addresses equal access to the elections system without discrimination including employment or overseas residence. Statute includes "military" employment. Does your language in subsection 9 include military members?

Subsection 4 addresses voters who are waiting to vote when the polls close. Statute calls for ending voting at a time certain. Subsection 4 is silent on this issue.

SENATOR SPEARMAN:

Regarding your question about military members, four years ago legislation was introduced to help secure the voting rights of military members.

Last Session, there was discussion regarding the timing of closing polls. There was recognition that because urban areas have many more voters than rural areas, some adjustments in closing times could be made.

SENATOR SETTELMAYER:

I was involved in those discussions last Session. The adjustments to poll closing times related only to Election Day. As long as the person who is last in line was there at 7 p.m., he or she is allowed to vote.

SENATOR GANSERT:

Yes, subsection 4 specifies Election Day but is not clear regarding timing. The language could be more specific. It should be consistent in statute across the State.

SENATOR SPEARMAN:

My concern is making sure this fundamental right is not abridged by anyone at any time. I would be open to making the language more clear.

SENATOR GANSERT:

Regarding, subsection 9, "military" is included in NRS 293.2546 subsection 9 but not in S.J.R. 3.

SENATOR SPEARMAN:

I do want to include "military."

CHAIR CANNIZZARO:

We received a proposed amendment today. Have you had an opportunity to read it?

SENATOR SPEARMAN:

I have not seen it but will work with the sponsors.

TODD BAILEY (Nevada Accountability):

Voting is a fundamental right and should be included in the Nevada Constitution. We would all agree that the world and elections are far more complicated than they were five or ten years ago. We have proposed two amendments. The proposed amendments address some of the issues discussed during the last election and some of the things we know exist from our experience in recent elections. I have submitted our proposal ([Exhibit C](#)).

We propose amending section 1A to include subsection 12 stating, "To challenge the results of any electronic voting machine and the electronic systems that count votes." Challenges to the results of electronic voting machines have been unsuccessful in the courts because there is no evidence of irregularities. The evidence is in the system they are trying to access.

We propose amending section 1A to include subsection 13 stating, "To protect the integrity of their vote by requiring validation of identity at the time of casting a ballot." There should be a requirement to validate voters' identity at the time votes are cast.

STACEY SHINN (Progressive Leadership Alliance of Nevada):

Our organization performs extensive voter engagement, registration and encourages turnout. We support S.J.R. 3.

JANINE HANSEN (Nevada Families for Freedom):

I agree that voting is an important fundamental right. I have submitted a proposed amendment ([Exhibit D](#)). We propose amending section 1A, subsection 9 to include religion to the list of classes protected from discrimination. The Gallatin Election Day Battle took place in Missouri in August 1838. Two-hundred people forcibly prevented citizens from voting based on their religion. There have been instances of government-sponsored restrictions, based on religion, on citizens who attempted to vote or hold public office. This is a historical issue that is of significant concern to me.

The Nevada Constitution requires "perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested, in person or property, on account of his or her mode of religious worship." This supports including religion to S.J.R. 3. The historic events mentioned earlier occurred after religious rights were explicitly protected in the U.S. Constitution. It is important to protect everyone's right to vote.

SENATOR SPEARMAN:

I will consider these amendments. It is important that the sponsor of legislation propose amendments in advance.

The fundamental right to vote is not abridged based upon religion though there have been instances of voters who are questioned based on national origin. I am willing to look at evidence of voter suppression based on religion.

Senate Joint Resolution 3 is not about religion. This bill is about protecting and enshrining a fundamental American right and that is the right to vote, nothing more, nothing less.

CHAIR CANNIZZARO:

We will close the hearing on S.J.R. 3 and open the hearing on Senate Bill (S.B.) 113.

SENATE BILL 113: Revises provisions relating to elections. (BDR 24-452)

SENATOR PATRICIA FARLEY (Senatorial District No. 8):

Senate Bill 113 addresses a growing number of candidate residency issues over the past few years. During the last several election cycles, candidates have been found to have violated the residency requirements set forth in Nevada law. We know that residency violations are often a question of intent and that courts have a difficult time making determinations.

Nevada Revised Statutes 293.1755 and 293C.200 state candidates must reside in their district, county, city, township or other area for at least 30 days immediately preceding the date of the close of filing of declarations of candidacy or acceptances of candidacy for the office which a person seeks. Violations often result in the candidate being declared ineligible to hold office and if found early enough, the candidate can be removed from the ballot. Even though a candidate may be ineligible to serve and guilty of a gross misdemeanor for knowingly and willfully filing a false declaration of candidacy, what about the trust he or she has violated with the voters? The candidate has collected campaign contributions. Successful candidates are issued a certificate of election even after a court has ruled they are ineligible to hold office.

To address these important questions and to strengthen the law I requested S.B. 113. Many of you may be familiar with this bill as it is a reintroduction of S. B. No. 403 of the 78th Session which passed unanimously in the Senate and the Assembly Committees on Legislative Operations and Elections only to be held up at the end of Session on the Assembly Floor. This bill is about good government and transparent campaign practices, and it received full support from both parties in 2015.

Senate Bill 113 adds another component of penalty or remedy for violating the candidate residency requirement. The bill requires candidates in violation of

residency requirements to reimburse those who made campaign donations whether or not the contributions were spent on any authorized campaign or legal expenses. The bill sets this reimbursement threshold at \$100 and any other monetary contribution which cumulatively exceeds \$100 from the same person. If a candidate receives a contribution for less than \$100, the candidate must donate an equivalent amount to any tax-exempt nonprofit entity. Senate Bill 113 also provides that if a contributor declines to be reimbursed or cannot be located, the candidate must donate the funds to a tax-exempt nonprofit entity. The district court has discretion to require a candidate to reimburse all or a portion of the contributions to the contributor or nonprofit entity as the case may be. The bill provides that such reimbursements must occur no later than the fifteenth day of the second month after the district court's ruling or if an appeal is made, after the appeal is resolved with a final order.

To provide some flexibility, S.B. 113 allows a candidate who is unable to make all of the reimbursements to file a request for extension with the Secretary of State (SOS.) The SOS has the option to extend the period for making all the reimbursements to the approved installment plan proposed by the candidate. If the installment plan is approved, the SOS shall create a record available for public review, which sets forth the terms, the plans and the circumstances required.

Senate Bill 113 lays out other reimbursement parameters. In addition to contribution and expense reporting required in NRS 294A, the candidate must submit to the SOS a report listing all reimbursements and donations made. The SOS shall set by regulation the due dates of such reports. In addition, the candidate shall not use as reimbursement any contributions received as a candidate in any other election. All reimbursements must be made prior to disposing of unrelated campaign funds pursuant to the disposition of the unspent contribution requirement set forth in NRS 294A. The bill also requires that disclaimers describing reimbursement provisions be included on the SOS's Website, on the declaration of candidacy forms, guidebooks, handbooks or other informational materials prepared for candidates.

Senate Bill 113 provides that legislative candidates are considered ineligible if they fail to meet the qualifications required for the office or are found by a court to be disqualified from entering upon the duties of the office. Such an ineligible candidate may not be seated as a Legislator nor subscribe to the official oath of office and must not be issued a certificate of election regardless of the number

of votes cast. Finally, the bill is effective upon passage and approval to allow the SOS time to adopt the necessary regulations on January 1, 2018, for all other purposes. Senate Bill 113 puts more teeth into laws regarding candidate residency violations. Moreover, it gives some relief to those who put their faith and their money into candidates.

SENATOR ATKINSON:

Can you provide more detail regarding reimbursement requirements?

SENATOR FARLEY:

A judge will make a decision regarding a candidate's liability. Contributions over \$100 must be reimbursed. Contributions under \$100 or that are unreturnable are donated to a tax-exempt nonprofit organization.

SENATOR ATKINSON:

Last Session, there was concern that candidates might be required to pay back a good deal of money. If all the funds had been spent during the campaign, they might need to mortgage their home. If a candidate received \$50,000 and spent \$40,000, can the judge order him or her to return all \$50,000?

SENATOR FARLEY:

Yes. This was discussed last Session and an amendment was adopted to clarify the issue. From that discussion, we agreed to leave the reimbursement decision to a district court judge.

SENATOR GANSERT:

I read section 14, subsection 1 of S.B. 113 to say the district court "shall" order an amount. The discretion is in the amount. It can be equal to the monetary contribution or any proportion thereof.

SENATOR FARLEY:

The purpose of the legislation is to penalize those who knowingly file for candidacy in a district where they do not live. Donors sometimes contribute large sums of money and should be reimbursed when the deception is intentional. Senate Bill 113 will stop people from taking the risk.

JOE GLORIA (Registrar of Voters, Clark County):

We support S.B. 113. It creates a tremendous amount of confusion for voters when an ineligible candidate is on the ballot. The concepts related to forcing

candidates who are determined to have falsely claimed residency in a district when filing for candidacy to reimburse their campaign contributions will be a good deterrent for this activity. The language removes the possibility for this ineligible candidate to be seated as a Legislator.

SENATOR ATKINSON:

I support penalizing those who violate residency requirements. It is illegal and action should be taken against offenders. Can we make it simple? Prohibit the Senate and the Assembly from seating an ineligible candidate following the election and impose a mandatory fine on the individual.

Senate Bill 113 may be a more complicated remedy than necessary.

SENATOR FARLEY:

In my experience in politics, I find that political parties and candidates may take a risk if the penalty is manageable. If a fine is \$25,000 and can be paid from campaign or party funds, some may decide it is worth \$25,000 to get the seat. Candidates should be held personally responsible for their actions and for returning funds unlawfully collected.

SENATOR ATKINSON:

We could restrict the source of reimbursement funds. This restriction is in statute. Donors can ask for a return of their contributions.

SENATOR FARLEY:

It is unlikely that politically active donors would ask for a return of their contributions. This is the reason for designating district court judges as decision makers. We did not want the matter to be a political discussion. It is a legal matter. These individuals cause extra work and confusion during the electoral process. It is costly for registrars to remove an ineligible candidate from the ballot and to inform voters of the changes. The harm goes beyond monetary loss to donors.

I am not opposed to imposing a fine as long as it can only come from personal funds. We need to demonstrate personal responsibility and integrity when we are accepting campaign contributions.

SENATOR ATKINSON:

I agree with the need for personal responsibility. We want to make it clear that ineligible candidates cannot be seated. Donors will ask for a return of their contributions at that point.

MATTHEW TRAMP:

I support S.B. 113. I was a candidate and understand the issue. When candidates run for office and learn their opponent is not eligible to run due to residency requirements, the candidates have spent time and resources that cannot be recovered. I liken it to college sports teams. When a team is found ineligible, teammates and opponents suffer equally.

WAYNE THORLEY (Deputy Secretary for Elections, Office of the Secretary of State):

We are neutral in regard to policy in S.B. 113. One technical issue is the term "candidate" and the way it is defined in NRS 294A. Section 14, subsection 1 of S.B. 113 requires a candidate judged to be ineligible to reimburse each person who made a monetary contribution to the candidate. Nevada law deems an individual as a candidate the first time he or she accepts a \$100 contribution. Once you accept a \$100 contribution, even if you have not publically declared you are running for office and have not signed a declaration of candidacy, you are a candidate under NRS 294A and are subject to reporting requirements.

What time frame would this reimbursement requirement apply to? If the decision is left to a district court judge, it is a reasonable solution and would help the SOS's Office with enforcement. Without a judge's decision, it may mean that contributions accepted over many years and election cycles fall under the reimbursement requirement.

When donors give money to a candidate, they are not giving money to the candidate to run for a specific office. It is a contribution to the candidate to run for any office. People who are considering running for Governor in 2018 may be accepting contributions in anticipation of their candidacy. If they run for another office and are found in violation of those residency requirements, are they required to return funds collected as a potential candidate for Governor? If it is up to a district court judge to decide, enforcement of the provisions of section 14 will be less complicated.

SENATOR ATKINSON:

You said when a donor gives money to a candidate that donor does not know what office the candidate is running for. Can you clarify?

MR. THORLEY:

A donor may contribute to an individual with the anticipation of his or her eventually running for office. *Nevada Revised Statutes 294A* defines candidate for the purpose of reporting contributions and expenditures as a person who accepts \$100 from a donor.

I am not suggesting the statute needs to be changed or that it is plausible or likely that a donor would contribute to someone who has not declared candidacy. An individual may decide to run for office, collect campaign donations and then change his or her mind.

SENATOR ATKINSON:

Donors can request a return of contributions if a candidate decides not to run for office.

MR. THORLEY:

I agree. The purpose for raising the issue is to make the Committee aware of potential for conflict between NRS 294A and section 14 of S.B. 113. The SOS's Office is looking for clarification.

SENATOR SEGERBLOM:

Is there a way to quantify costs to the State and counties when an ineligible candidate is disqualified? Can the candidate be required to reimburse those costs?

SENATOR FARLEY:

I do not have those figures but would consider including them in the penalty. I will reach out to the Clark County Registrar for information.

In response to the SOS concerns, section 12, subsection 3 clearly states the district court makes a determination of penalties under section 14. The SOS is only involved if the person making the reimbursement requires payment arrangements. I would welcome a conversation with the Secretary of State's Office.

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CHAIR CANNIZZARO:

I will close the hearing on S.B. 113 and adjourn the meeting at 4:29 p.m.

RESPECTFULLY SUBMITTED:

Jan Brase,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster
S.J.R. 3	C	1	Todd Bailey / Nevada Accountability	Proposed Amendments
S.J.R. 3	D	1	Janine Hansen / Nevada Families for Freedom	Proposed Amendment