

SENATE BILL NO. 492—COMMITTEE ON LEGISLATIVE
OPERATIONS AND ELECTIONS

MARCH 26, 2007

Referred to Committee on Legislative Operations and Elections

SUMMARY—Provides for a procedure to verify the electronic tabulation of votes produced by electronic voting systems. (BDR 24-810)

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

~

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

AN ACT relating to elections; requiring county clerks to conduct a count by hand of certain ballots in a certain number of precincts for designated races at each primary election and general election; creating a committee within the office of the Secretary of State to determine designated margins of difference that are acceptable between counts by hand and the counts that are electronically tabulated; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires mechanical recording devices to be capable of providing a permanent paper record of each ballot to be used as the official record for a recount (NRS 293.2696, 293B.084), but makes no provision for using these paper records to verify the accurate operation of the mechanical recording devices when a recount has not been requested. **Sections 4 and 5** of this bill require the county clerks to conduct or cause to be conducted a count by hand of the regular votes cast on election day in a certain number of precincts for certain designated races at each primary election and general election to verify that the electronic tabulation is accurate within a certain designated margin of error. **Section 4** also requires the permanent paper records produced by the mechanical recording device to be used for the count by hand. **Sections 6 and 7** of this bill also require a similar count by hand of a certain number of ballots cast during the period for early voting. **Section 9** of this bill requires the county clerks to maintain the security of the ballots during the counts by hand. **Sections 10 and 11** of this bill require the Secretary of State to report to the Legislature and to adopt regulations concerning the counts by hand. **Section 15** of this bill creates the Committee to Verify the Electronic Tabulation of Votes within the Office of the Secretary of State.



* S B 4 9 2 *

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

Section 1. NRS 293.093 is hereby amended to read as follows:
293.093 “Regular votes” means the votes cast by registered voters, except votes cast by absent ballot **H**, *mailing ballot or provisional ballot.*

Sec. 2. NRS 293.2696 is hereby amended to read as follows:
293.2696 The Secretary of State and each county and city clerk shall ensure that each voting system used in this State:

1. Secures to each voter privacy and independence in the act of voting, including, without limitation, confidentiality of the ballot of the voter;

2. Allows each voter to verify privately and independently the votes selected by the voter on the ballot before the ballot is cast and counted;

3. Provides each voter with the opportunity, in a private and independent manner, to change the ballot and to correct any error before the ballot is cast and counted, including, without limitation, the opportunity to correct an error through the issuance of a replacement ballot if the voter is otherwise unable to change the ballot or correct the error;

4. Provides a permanent paper record with a manual audit capacity which must be available as an official record for a *count by hand or* recount; and

5. Meets or exceeds the standards for voting systems established by the Federal Election Commission, including, without limitation, the error rate standards.

Sec. 3. Chapter 293B of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 11, inclusive, of this act.

Sec. 4. 1. *For each primary election and general election, after receipt of all sealed containers at the central counting place pursuant to NRS 293.3625 and after the tally lists have been posted pursuant to NRS 293.383, the county clerk shall cause to be conducted a count by hand of the regular votes cast:*

(a) On a mechanical recording device;

(b) At a polling place on election day;

(c) At two of the precincts in that county or at least 2 percent of the precincts in that county, whichever is greater, to be selected pursuant to subsection 2; and

(d) For the offices and question on the ballot, if applicable, to be selected by lot pursuant to subsection 3.



1 ➡ *To count the ballots from a mechanical recording device by*
2 *hand, the county clerk shall use the permanent paper records that*
3 *mechanical recording devices are required to provide.*

4 2. *The precincts for which the regular votes cast at a polling*
5 *place on election day are to be counted by hand must be selected*
6 *by lot, without the use of a computer, by the designated chairmen*
7 *of the political parties. The order of selection by the chairmen or*
8 *designees must be determined by lot.*

9 3. *The offices and question on the ballot, if applicable, for*
10 *which the regular votes cast at a polling place on election day are*
11 *to be counted by hand must be selected by lot by the designated*
12 *chairmen of the political parties and must include:*

13 (a) *One federal office for which two or more candidates*
14 *appeared on the ballot;*

15 (b) *One state office, other than State Senator or State*
16 *Assemblyman, for which two or more candidates appeared on the*
17 *ballot;*

18 (c) *One state legislative office, for which two or more*
19 *candidates appeared on the ballot;*

20 (d) *One question on the ballot, as long as at least one question*
21 *appeared on the ballot for that particular election; and*

22 (e) *President and Vice President of the United States, if two or*
23 *more candidates for this office appeared on the ballot.*

24 ➡ *At least four races must be counted by hand. If one of the*
25 *categories listed in paragraphs (a) to (d), inclusive, does not*
26 *appear on the ballot and no candidates for President and Vice*
27 *President of the United States appear on the ballot, an additional*
28 *race from another category must be counted by hand. If one of the*
29 *categories listed in paragraphs (a), (b) and (c) does not have a*
30 *race for an office where more than one candidate appears on the*
31 *ballot, an additional race from another category must be counted*
32 *by hand.*

33 4. *The designated chairmen of the political parties shall*
34 *designate at least three persons for each precinct from the*
35 *membership of the election boards working at the polling places*
36 *on election day or one of the boards created by the county clerk*
37 *pursuant to NRS 293B.360, who shall conduct the count by hand,*
38 *in public and under the supervision of the county clerk. The*
39 *county clerk shall compensate these persons at the same rate fixed*
40 *for election board officers generally. If these persons fail to*
41 *appear and perform the count by hand pursuant to this section, no*
42 *count by hand will be conducted and the electronic tabulation*
43 *shall be deemed the official count.*

44 5. *If possible, the count by hand must begin within 24 hours*
45 *after the last closing of a polling place in that county on election*



1 day and must be completed before the canvass of the election for
2 that county. The county clerk shall provide the results of the count
3 by hand to the Secretary of State, who shall make the results
4 available on his Internet website after the results of the election
5 are certified.

6 6. As used in this section, the term "designated chairmen of
7 the political parties" means the chairman of the county central
8 committee of each major political party that was qualified for the
9 particular election, or his designee, and one designee of each
10 minor political party that was qualified to place the name of its
11 candidates on the ballot for the particular election.

12 **Sec. 5. 1.** If the result of the count by hand conducted
13 pursuant to section 4 of this act is different from the electronic
14 tabulation of those same ballots for one of the selected offices or
15 question on the ballot by an amount that is less than the
16 designated margin, the result of the electronic tabulation
17 constitutes the official count.

18 2. If the result of the count by hand is different from the
19 electronic tabulation of those same ballots for the candidates in a
20 race for one of the selected offices or for or against a question on
21 the ballot by an amount that is equal to or greater than the
22 designated margin, a second count by hand of those same ballots
23 must be conducted.

24 3. If the result of the second count by hand conducted
25 pursuant to subsection 2 is different from the electronic tabulation
26 of those same ballots for the selected office or question on the
27 ballot by an amount that is less than the designated margin, the
28 result of the electronic tabulation constitutes the official count.

29 4. If the result of the second count by hand conducted
30 pursuant to subsection 2 is different from the electronic tabulation
31 of those same ballots for the selected office or question on the
32 ballot by an amount that is equal to or greater than the designated
33 margin, a third count by hand must be conducted. The third count
34 by hand must include the regular votes cast on a mechanical
35 recording device at polling places on election day at four
36 precincts, including the original two precincts, or at least 4 percent
37 of the precincts in the county, including those precincts that
38 comprised the original 2 percent, whichever is greater. The
39 additional precincts must be selected by lot as set forth in
40 subsection 2 of section 4 of this act.

41 5. If the result of the third count by hand conducted pursuant
42 to subsection 4 is different from the electronic tabulation of those
43 same ballots for the selected office or question on the ballot by an
44 amount that is less than the designated margin, the result of the
45 electronic tabulation constitutes the official count.



6. If the result of the third count by hand is different from the electronic tabulation of those same ballots for the selected office or question on the ballot by an amount that is equal to or greater than the designated margin, a fourth and final count by hand must be conducted. The fourth count by hand must include the regular votes cast at polling places on election day for the selected candidates and question in all the precincts of the county that have the particular office or question on their ballots. Any regular votes cast for the candidates in a race for the particular office or question on the ballot by voters who reside in another county must not be included in the fourth count by hand.

7. If a fourth count by hand is conducted, it must be repeated until the result of two counts by hand are identical. That number constitutes the official count for that race.

8. As used in this section, "designated margins" means the amount determined by the Committee to Verify the Electronic Tabulation of Votes created by section 15 of this act as the amount that is an acceptable difference between a count of ballots conducted by hand and a count of ballots conducted by electronic tabulation.

Sec. 6. 1. At the end of one or more days to be selected by the designated chairmen of the political parties, during the period for early voting, the county clerk shall randomly select a number of storage devices from the mechanical recording devices, along with the permanent paper record of the ballots that are stored on the storage devices. The number of storage devices selected must be calculated to represent a number of ballots for early voting that will equal, approximately, 1 percent of the total number of ballots for early voting that were cast in the county in the previous primary or general election, or 5,000 ballots for early voting, whichever is less. Until the count by hand is completed pursuant to this section, these storage devices must be kept separate from the other storage devices or sealed containers containing ballots for early voting.

2. From the storage devices randomly selected pursuant to subsection 1, the county clerk shall cause to be conducted, in public, a count by hand of the ballots for early voting:

(a) Stored on the storage devices randomly selected pursuant to subsection 1, using the permanent paper records; and

(b) Cast for the offices and question on the ballot, if applicable, selected pursuant to subsection 3 of section 4 of this act.

3. As used in this section, the term "designated chairmen of the political parties" means the chairman of the county central committee of each major political party that was qualified for the



1 particular election, or his designee, and one designee of each
2 minor political party that was qualified to place the name of its
3 candidates on the ballot for the particular election.

4 **Sec. 7. 1.** If the result of the count by hand conducted
5 pursuant to section 6 of this act is different from the electronic
6 tabulation of those same ballots for early voting for one of the
7 selected offices or question on the ballot, if applicable, by an
8 amount that is less than the designated margin, the electronic
9 tabulation must be included in the canvass and no further count
10 by hand of the early ballots may be conducted.

11 2. If the result of the count by hand is different from the
12 electronic tabulation of those same ballots for early voting for one
13 of the selected offices or question on the ballot by an amount that
14 is equal to or greater than the designated margin, a second count
15 by hand of those same ballots for early voting must be conducted.

16 3. If the result of the second count by hand is different from
17 the electronic tabulation of those same ballots for early voting for
18 the selected office or question on the ballot by an amount that is
19 less than the designated margin, the electronic tabulation must be
20 included in the canvass and no further count by hand of the early
21 ballots may be conducted.

22 4. If the result of the second count by hand is different from
23 the electronic tabulation of those same ballots for early voting for
24 the selected office or question on the ballot by an amount that is
25 equal to or greater than the designated margin, a third count by
26 hand must be conducted. The third count by hand must include a
27 number of ballots for early voting equal to 2 percent of the total
28 ballots for early voting cast in that county in the previous primary
29 election or general election, including the ballots that comprised
30 the original 1 percent, or 10,000 ballots for early voting, including
31 the original 5,000 ballots for early voting, whichever is less. The
32 additional ballots for early voting must be selected pursuant to a
33 procedure that must be set forth in the regulations of the Secretary
34 of State adopted pursuant to section 11 of this act.

35 5. If the result of the third count by hand is different from
36 any of the earlier counts by hand of those same ballots for early
37 voting cast for the candidates in a race for one of the selected
38 offices or for or against a question on the ballot by an amount that
39 is equal to or more than the designated margin, the count by hand
40 must be repeated until a count by hand results in an amount that
41 is different from the electronic tabulation of those same ballots for
42 early voting for the selected office or question on the ballot by an
43 amount that is less than the designated margin.

44 6. If possible, the counts by hand conducted pursuant to this
45 section and section 6 of this act must begin within 24 hours after



1 *the close of polling places on the last day of early voting and must*
2 *be completed before election day. The county clerk shall provide*
3 *the results of the count by hand to the Secretary of State at the*
4 *same time as he provides the results of the count by hand*
5 *conducted pursuant to section 4 of this act and, if applicable,*
6 *section 5 of this act. The Secretary of State shall make the results*
7 *available on his Internet website after the results of the election*
8 *are certified. No results from the counts by hand of ballots for*
9 *early voting may be released before the close of the last polling*
10 *place on election day.*

11 7. As used in this section, "designated margins" means the
12 amount determined by the Committee to Verify the Electronic
13 Tabulation of Votes created by section 15 of this act as the amount
14 that is an acceptable difference between a count of ballots
15 conducted by a count by hand and a count of ballots conducted by
16 electronic tabulation.

17 **Sec. 8.** During any count by hand conducted pursuant to
18 sections 4 to 7, inclusive, of this act, election board officers and
19 the county clerk shall attempt to determine the intent of the voter
20 and shall follow the standards of NRS 293.3677.

21 **Sec. 9.** Notwithstanding any other provision of this title, the
22 county clerk shall retain custody and ensure the security of the
23 ballots during any count by hand conducted pursuant to sections 4
24 to 7, inclusive, of this act.

25 **Sec. 10.** If any county requires a fourth count by hand
26 pursuant to section 5 or 7 of this act, the Secretary of State shall,
27 on or before February 1 of each odd-numbered year, submit a
28 report to the Director of the Legislative Counsel Bureau for
29 transmission to the Legislature. The report must provide a
30 description of the multiple counts by hand and the results of these
31 counts. The report must also provide the opinion of the Secretary
32 of State as to the cause of the continued discrepancies. The report
33 must also indicate the opinion of the Secretary of State as to
34 whether an independent consultant should be hired to review the
35 use of electronic recording devices in elections in this State.

36 **Sec. 11.** The Secretary of State shall adopt regulations to
37 carry out the provisions of sections 4 to 11, inclusive, of this act.
38 In particular, the regulations must include, without limitation:

39 1. Any details required for the selection of precincts or
40 designated races or questions on the ballot by lot that will be
41 subject to the counts by hand pursuant to section 4 of this act.

42 2. A procedure for the selection of additional ballots for early
43 voting for a third count by hand pursuant to section 7 of this act, if
44 necessary.



Sec. 12. NRS 293B.084 is hereby amended to read as follows:

293B.084 1. A mechanical recording device which directly records votes electronically must:

(a) Bear a number which identifies that mechanical recording device.

(b) Be equipped with a storage device which:

(1) Stores the ballots voted on the mechanical recording device;

(2) Can be removed from the mechanical recording device for the purpose of transporting the ballots stored therein to a central counting place; and

(3) Bears the same number as the mechanical recording device.

(c) Be designed in such a manner that voted ballots may be stored within the mechanical recording device and the storage device required pursuant to paragraph (b) at the same time.

(d) Be capable of providing a record printed on paper of:

(1) Each ballot voted on the mechanical recording device; and

(2) The total number of votes recorded on the mechanical recording device for each candidate and for or against each measure.

2. The paper record described in paragraph (d) of subsection 1 must:

(a) Be printed and made available for ~~[a manual audit.]~~ *the counts by hand required pursuant to sections 4 to 7, inclusive, of this act and other manual audits*, as necessary; and

(b) Be printed and serve as an official record for a recount, as necessary.

Sec. 13. NRS 293B.354 is hereby amended to read as follows:

293B.354 1. The county clerk shall, not later than June 15 of each year in which a general election is held, submit to the Secretary of State for his approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of ballots , *including any counts by hand conducted pursuant to sections 4 to 7, inclusive, of this act* at a polling place, receiving center or central counting place.

2. The city clerk shall, not later than January 1 of each year in which a general city election is held, submit to the Secretary of State for his approval a written plan for the accommodation of members of the general public who observe the delivery, counting, handling and processing of the ballots at a polling place, receiving center or central counting place.

3. Each plan must include:

(a) The location of the central counting place and of each polling place and receiving center;



* S B 4 9 2 *

(b) A procedure for the establishment of areas within each polling place and receiving center and the central counting place from which members of the general public may observe the activities set forth in subsections 1 and 2;

(c) The requirements concerning the conduct of the members of the general public who observe the activities set forth in subsections 1 and 2; and

(d) Any other provisions relating to the accommodation of members of the general public who observe the activities set forth in subsections 1 and 2 which the county or city clerk considers appropriate.

Sec. 14. NRS 293B.400 is hereby amended to read as follows:

293B.400 1. Except as otherwise provided in this section, *for a count by hand pursuant to sections 4 to 7, inclusive, of this act*, if a recount is demanded pursuant to the provisions of NRS 293.403 or if an election is contested pursuant to NRS 293.407, the county or city clerk shall ensure that each mechanical recording device which directly recorded votes electronically for the applicable election provides a record printed on paper of each ballot voted on that device.

2. In carrying out the requirements of this section, the county or city clerk shall:

(a) Print only the records required for the *count by hand*, recount or contest; and

(b) Collect those records and deposit them in the vaults of the county clerk pursuant to NRS 293.391 ~~H~~, *unless their use is required immediately in which case the county or city clerk shall ensure their security.*

Sec. 15. Chapter 225 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Committee to Verify the Electronic Tabulation of Votes is hereby created within the Office of the Secretary of State.

2. The Committee consists of seven members, including:

(a) The Secretary of State or his designee; and

(b) Six other members appointed by the Secretary of State.

3. Of the six members appointed by the Secretary of State, not more than three may be members of the same political party and each must possess at least one of the following qualifications:

(a) Demonstrated expertise in advanced mathematics;

(b) Demonstrated expertise in statistics;

(c) Knowledge of the methods of random selection; or

(d) An understanding of the operations of mechanical voting systems or the type of software used in mechanical voting systems.



1 ↪ A person is not eligible to be a member of the Committee if he
2 has been affiliated with or received any compensation in the
3 preceding 5 years from any person or entity that provides
4 equipment or services for elections in this State.

5 4. The Secretary of State or his designee shall serve as the
6 Chairman of the Committee. The Chairman shall appoint a Vice
7 Chairman from among the members of the Committee. The
8 Secretary of State may assign such other employees of his Office
9 as he deems necessary to assist the Committee in its duties.

10 5. After the initial term, each member of the Committee shall
11 serve for a term of 2 years. If a vacancy occurs, the Secretary of
12 State shall appoint a new member to fill the vacancy for the
13 remainder of the unexpired term.

14 6. The Committee shall:

15 (a) Meet as deemed necessary by the Secretary of State, and at
16 least once not later than 15 days before each primary election and
17 general election.

18 (b) Establish or revise one or more designated margins that
19 are acceptable as a difference between the counts by hand
20 conducted pursuant to sections 4 and 6 of this act and, if
21 applicable, sections 5 and 7 of this act and the relevant electronic
22 tabulations. The Committee may establish different designated
23 margins for:

24 (1) The primary election than for the general election;

25 (2) Races for different offices;

26 (3) Questions on the ballot; and

27 (4) The ballots cast on election day than for the ballots cast
28 during the period for early voting.

29 (c) Provide the established or revised designated margins to
30 the Secretary of State not later than 10 days before each primary
31 election and general election.

32 7. The members of the Committee:

33 (a) Serve without compensation; and

34 (b) May receive the per diem allowance and travel expenses
35 provided for state officers and employees generally while engaged
36 in the business of the Committee.

37 **Sec. 16.** 1. The Secretary of State shall appoint the members
38 of the Committee to Verify the Electronic Tabulation of Votes
39 created by section 15 of this act as soon as practicable after
40 December 1, 2007.

41 2. The members of the Committee must be appointed to serve
42 initial terms as follows:

43 (a) Two of the members must be appointed to serve a term of 1
44 year.



- 1 (b) Four of the members must be appointed to serve a term of 2
- 2 years.

③0

