

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fifth Session
March 10, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:54 p.m. on Tuesday, March 10, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Harry Mortenson, Vice Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblywoman Heidi S. Gansert (excused)
Assemblywoman Debbie Smith (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Terry Horgan, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

Larry Lomax, Registrar of Voters, Clark County, Las Vegas, Nevada
Matt Griffin, Deputy for Elections, Office of the Secretary of State
Sue Merriwether, Chief Deputy Election Clerk, Clerk/Recorder's Office,
Carson City, Nevada
Monica Martinez Simmons, City Clerk, City of Henderson, Nevada
J. David Fraser, Executive Director, Nevada League of Cities and
Municipalities, Carson City, Nevada

Chair Koivisto:

[Roll called. Committee protocol and rules were explained.] We will start with Assembly Bill 41, which we heard a couple of weeks ago. This bill is being brought on behalf of the Office of Veterans Services. There was some confusion with several of the provisions in the bill, and we asked the parties to work together to clarify those issues. I believe that has been done, so if the people who want to talk about this bill would like to come to the witness table and help us out, the Committee would appreciate it.

Assembly Bill 41: Makes various changes to voter registration and voting procedures for certain members of the Armed Forces of the United States and their family members and certain other voters who reside outside the United States. (BDR 24-324)

Patrick Guinan, Committee Policy Analyst:

The amendment to A.B. 41 is in your work session binder and is a working document provided to us by Sue Merriwether in the Carson City Clerk/Recorder's Office ([Exhibit C](#)). Several people have agreed to attend today's hearing and go through the bill with us to explain exactly what has been added in, taken out, and clarified.

Larry Lomax, Registrar of Voters, Clark County, Las Vegas, Nevada:

I would like to point out that all of us, including the Secretary of State's Office and the Office of Veterans Services, have worked on this mock-up. We are all in agreement with what we are going to present here.

I will just work my way through the bill starting on page 2. Section 3 is deleted in its entirety, because none of it is necessary. Everything that is covered in section 3 is addressed other places in the statutes as they currently stand or is addressed elsewhere in this bill.

Section 5, at the bottom of page 4 on lines 43 through 45, talks about electronic transmission, and references to electronic transmission have been added in other places in this bill. Electronic transmission is an acceptable form of getting ballots back and forth to people overseas, and the Secretary of State will define what that means. What we envision is the use of attachments, because portable document format (PDF) files attached to email are a much more efficient way to get things back and forth as opposed to faxes in this day and age.

Assemblyman Cobb:

Would it be a writable PDF, so it could be opened, the information written in, and then sent right back to you?

Larry Lomax:

That is correct.

Assemblyman Cobb:

From the same email address?

Larry Lomax:

Yes. Essentially, we email the PDF for the voter to complete. There is some additional paperwork required that would explain how it would be done. It would come back with a signature we could match. The voter would receive a PDF, fill it out, sign it, scan it in, make it an attachment to an email, and send it back.

Assemblyman Cobb:

Would it be a writable PDF, meaning that you could actually type into the PDF?

Larry Lomax:

It is really up to the Secretary of State to decide that.

Matt Griffin, Deputy for Elections, Office of the Secretary of State:

Initially, the idea is to make it writable so it could be signed at the bottom. Whether or not it would be a fill-in form—it is a very easy process to go back and make it a fill-in form, and we will investigate that if the bill is passed.

Assemblyman Cobb:

From personal experience, there are not a lot of scanners at forward operating bases in Iraq. To make this process as user-friendly as possible, the reason I said you fill it out on a writable PDF and then send it back from the same email address is that the email address is the verifier. If it is a personalized email address, that is proof that the person you are sending it to received it and sent it back, without having to go find some type of scanning machine which would introduce a paper copy into the electronic system.

Matt Griffin:

I do not know the answer to that right now, but you have made a very good point. We will have to work with the U.S. Department of Veterans Affairs to determine how comfortable they would be with assigning an email address in place of a signature for verification of identity, but these are the types of things we have all found as we worked through this bill. The Department of Veterans Affairs needs to be actively involved. We do not know, sitting here today, what the availability would be of certain technologies by some of the troops.

Larry Lomax:

Moving forward to page 5, the paragraph at the top beginning on line 3 and continuing through line 8, all of us agree, is unnecessary. It is not that it is untrue, but it adds nothing to the law.

Lines 29 and 30 on that page clarify that you can only vote on candidates whose names appear on the ballot, and Nevada does not allow write-in votes.

On line 39, you will see a square "4," and if you turn to the next page, it is sequence number 4 in the editing program that was used. What we have attempted to do throughout the bill is clarify: where the previous draft said "government form" we have inserted the name of the government form. So in this particular case, where you see that number "4," the words "a federal write-in absent ballot" are inserted before "may be used for a primary or general or special election...."

All of us found the bill very confusing because there is a write-in absent ballot form and then there is a federal voting postcard application. In all cases previously, those were just referred to as "government forms," so throughout this bill, we have clarified specifically which form we are talking about. The language here just clarifies that the federal write-in absent ballot is legitimate in Nevada and that the voters from overseas can use it.

On page 6—and please note that there are two pages 6 because of all the changes to the text—we have deleted the requirement that you request an absent ballot 30 days before the primary in order to use the federal write-in ballot. It does not add anything to the bill. We want to make it as easy as possible for these people to vote, and it does not matter to us if they requested it 30 days before or not.

There are more deletions on lines 6 through 17. Then we go to line 18, and once again, the language "the absent ballot may be used" is inserted. The language goes on to say that they can use it to vote the full ballot when casting their ballots.

Lines 26 through 30 contain more language on using the federal write-in absent ballot and state that voters can return ballots via approved electronic transmission if necessary. Further language at the bottom of the page allows the ballot to be used for any election for which that voter would be eligible to participate, rather than just for a federal election.

On page 7, the language allows return of the absent ballot by electronic transmission and then describes the additional paperwork that is required when using electronic transmission, which basically acknowledges that you are giving up your privacy.

Section 9 clarifies the federal write-in ballot. The suggestion is to change the wording on page 8, line 38. Where it currently says "Armed Forces personnel," the wording would be changed to "electors who are not registered to vote and are applying for absent ballots," since any overseas voter can do this. It does not have to be a uniformed voter.

The language on page 9, line 1, clarifies that we are talking about the federal postcard application, as opposed to the federal write-in ballot, and that it can be used both to register and to request an absentee ballot. Sue, are the changes on line 7 and all those other changes deleted?

**Sue Merriwether, Chief Deputy Election Clerk, Clerk/Recorder's Office,
Carson City, Nevada:**

Yes.

Larry Lomax:

Most of the changes on page 10 add electronic transmission. At the bottom of the page on line 44 and over to page 11, this language refers to someone who has never resided in the state but whose parents have an address or can

describe that the person is still eligible to vote in the state. I know the Secretary of State wanted this to be only at the federal level; is that correct?

Matt Griffin:

That is correct. The Secretary of State wants availability only for the federal offices.

Larry Lomax:

The language on page 11, lines 13, 14, and 15, clarifies again that it is a federal postcard application as opposed to just a government form. On line 19, the language states that the county clerks shall not register a voter who submits the form from any location in the state. Clark County has asked that this be deleted. Nellis Air Force Base is in Clark County, and we get hundreds of people from the Base registering on those postcards. Right now, we have to send those people letters saying that they cannot register using a postcard because they are in the state. We enclose a voter registration form and ask the individual to fill that out and send it back to us. It is really bureaucratic nonsense. We get all the same information on the federal postcard application, so that is why we would like to be able to accept the postcard if the person is in-state. I was in the military, and military folks do not realize that the process is different when you are actually in the state, until they try to register to vote.

There are no changes on the rest of that page to what is currently the law other than adding in the language referring to electronic transmission. All the deletions relate to sections that have already been explained in other parts of the bill and that basically state anyone can vote using these forms if he or she is overseas and is otherwise eligible.

Language at the top of page 12 defines when a person is registered. If there is a postmark, that will be the date used. If the application is electronically transmitted, the individual will be registered on that date. Section 15 essentially includes family members with the military member. If, through no fault of his own, a military member is discharged at a late date, it makes the spouse or dependent eligible to vote in the election, as well as the military member himself.

The next changes are on page 14 and are basically all deletions. I believe these changes are all covered somewhere else in the bill. The language is redundant at this point in time. There is more language on deleting fax machines and adding approved electronic transmission, which can include a fax machine. Have I missed anything?

Matt Griffin:

I think Mr. Lomax only missed two items. The first is under section 8 on page 6, under *Nevada Revised Statutes* (NRS) 293.3157. The proposed change we presented to the Committee would come on line 43. We would insert language to read, "approved electronic transmission to request an absent ballot no later than 5 p.m. on the seventh day preceding an election."

The only other omission Mr. Lomax made, and I believe this was his suggestion, is at the top of page 9. There should be a paragraph (c). Paragraph (b) talks about the Uniformed and Overseas Citizens Absentee Voting Act, and then paragraph (c) would also include a federal write-in absent ballot. Continuing from paragraph (c), we would insert the language "within the deadlines established by NRS 293.560 before receiving an absent ballot." The Secretary of State has no other proposed amendments to the bill.

Chair Koivisto:

Are there any questions from the Committee?

Assemblyman Settlemeyer:

Mr. Griffin, could you mention those changes again, please? Also, could the clerks weigh in on those changes and whether or not they had any problems with them, or what they think about them? You were discussing changes on page 9.

Matt Griffin:

Beginning at the top of page 9, as Mr. Lomax touched upon earlier, under the federal write-in absent ballot, there is a section under which you can register. We wanted to include that in the section and add that the form is an accepted form to register to participate under this Act.

Assemblyman Settlemeyer:

On page 6, you were saying within seven days?

Matt Griffin:

That is the existing deadline within state law to request an absentee ballot, so we are just putting that language into this bill.

Assemblyman Settlemeyer:

I did not know we were adding language that already existed. Thank you.

Matt Griffin:

For the record, this language would comport this process to be the same process for other matters. Essentially, this bill is a carve-out—a different way for people to participate in an election process if they are serving overseas. The only provision we added was so that their participation in this process would be subject to the same deadlines as those a Nevada resident would be subject to.

Chair Koivisto:

Are there any other questions from the Committee? Does everyone understand what we just went through? [No response.] We have a further amendment ([Exhibit D](#)) that is in your work session document. This is an amendment suggested by the American Civil Liberties Union (ACLU). I will let Patrick explain it to you.

Patrick Guinan:

The ACLU submitted this proposed amendment, and the explanation is contained within the document. I will read this one paragraph above their suggested language, and maybe the elections officials can weigh in on whether or not they are comfortable with it. The document reads:

As A.B. 41 is currently written, these benefits of electronic voter registration and absentee ballot submission might apply to family members who have not actually been overseas and seem not to have the special circumstances of those who have been overseas prior to an election. The following proposed amendment would clarify that this bill will not create a special class of people, but is instead responding to legitimate needs of those overseas.

I do not see the ACLU representative in the audience, but if the elections officials would like to let us know what you think, that would be great.

Matt Griffin:

Based on the proposed changes we have submitted to the Committee, the amendment is moot. It would not apply to that class of citizens, anyway.

Assemblyman Conklin:

Mr. Griffin, since you will be enforcing the statute in front of you, is it your interpretation that you are not creating a special class of people and that only those overseas are going to be eligible for this?

Matt Griffin:

I suppose my interpretation is somewhat irrelevant because I answer to someone above me, but the intent behind this is not to create a separate class whatsoever. As we have discussed today, our intent is to address the difficulties in participating in the elections process, due to time constraints, for those people serving overseas. The amendments that were offered today to the bill brought by the Office of Veterans Services are simply to afford them the opportunity to vote. We are just trying to reconcile that and make the registration process as straightforward as we can.

Assemblyman Mortenson:

You said you are not intending to create a special class of people. Did you say that your amendments, as they are here, take care of the ACLU's problem, or not? Also, could you point out where in the amendments the problem is taken care of?

Matt Griffin:

Under sections 7 and 14, we removed the section that allowed for people to vote who were not members of the Armed Forces or related to anyone who was a member of the Armed Forces. So, a civilian, with no connection to the military, who is living overseas would not be able to use his parents' address in the State of Nevada to vote at local elections. From the Secretary of State's position, we are not comfortable extending the right to vote for local offices that far and to people who may never have even set foot in the county, municipality, or whatever the case might be. With the revisions Mr. Lomax discussed, we just removed that section. As far as I can determine, that was the ACLU's concern, but I do not want to speak for the ACLU. If there has been any misunderstanding, I will be the first one to correct it with the Committee, but my understanding was that the ACLU did not want to create a class of people who, for no other reason than they live outside the United States, were afforded exceptional or additional rights over and above the rights of people who live in the United States. The fact that you do not live in the United States does not mean you can participate in any election where your parents have a house. That is why we removed that section from the bill, and it is my understanding that the ACLU was trying to do that as well.

Assemblyman Conklin:

Madam Chair, would you entertain a motion?

Chair Koivisto:

Yes, I will.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 41 USING THE AMENDMENTS OUTLINED TODAY BY THE CLERKS AND THE SECRETARY OF STATE'S OFFICE, BUT NOT THE AMENDMENT FROM THE ACLU.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GANSERT, KIHUEN, AND SMITH WERE ABSENT FOR THE VOTE.)

Let us move on to Assembly Bill 79. If the proponents of the bill will come forward, Patrick will walk us through the bill, and he can answer any questions.

[Assembly Bill 79](#): Revises provisions concerning city elections. (BDR 24-486)

Patrick Guinan, Committee Policy Analyst:

There is a summary sheet on the bill in your work session binders ([Exhibit E](#)). [Mr. Guinan read from the summary sheet.] The proponents did not suggest any amendments to the bill; however, due to the questions that were raised, they have agreed to accept amendments to the bill if they increase Committee members' comfort with the bill. I will run through those very quickly.

The first amendment is the result of a question by Assemblyman Settlemeyer and others and deals with section 1, subsection 1(c) of the bill. This is a section regarding creating a mail election and reads, "the governing body determines that conducting a city election in which all ballots must be cast by mail is in the best interest of the city." Some of the members voiced concern that this section may be overly broad. The proponents of the measure have said they would be happy to strike that language from the bill if it makes people feel more comfortable.

The next amendment that has been agreed to concerns section 3, subsection 4 of the bill on page 3. You will see language stricken-through in that section of the bill that reads "held in a city of population category one or two" or "more than." Language is also stricken lower on that page at lines 42 through 45 and reads, "If, in the primary city election, no candidate receives a majority." The strike-out continues from there to the end of the page. The proponents have agreed that language can be restored in the bill if it provides the Committee members with a greater level of comfort.

The third amendment they have agreed to would add language to section 5, subsection 2, of the bill. Section 5 begins on page 4, and subsection 2(b) is at

the top of page 5. This is conceptual only, because I do not know exactly where the bill drafters would put this language into the bill, but this section deals with posting election results.

At the top of page 5, in section 5, subsection 2 of the bill, this new language deals with posting election results on a website rather than physically posting them. Some members of the Committee voiced their concern with not posting election results, in the event people who did not have access to the Internet wanted to see them. The proponents of the bill explained this was primarily a security concern related to people posting election results very late at night. Their suggestion was to add language to this section of the bill that would read something to the effect of, "you can require the physical posting of the election results to take place no later than the opening of business on the following day," rather than forcing people to post election results very late at night in what might potentially be a dangerous place. That is all I have, Madam Chair.

Chair Koivisto:

Are there questions from the Committee? [No answer.] I was really confused when I saw this the first time. Are there any comments from the people at the witness table that would give us some comfort with this?

Monica Martinez Simmons, City Clerk, City of Henderson, Nevada:

Madam Chair, I completely understand why you might have been confused. The initial proposal was edited, I think by the Legislative Counsel Bureau, and additional language, which we never intended, was added to the bill. So we definitely appreciated what your concerns were.

To make it clear for the record, I did want to state that, in any case where the city charter presents language that may differ from the statute, the city charter prevails. Issues arise every so often, and some folks may get confused because our city charter is a little bit different from the statute, but I would like to reinforce that statement for the record.

Assemblyman Ohrenschall:

On page 3, section 3, subsection 4, Mr. Guinan said you, the proponents of the bill, would be willing to restore the deleted language if it increased our comfort level. Could you explain the differences to the Committee if we go back to the old language versus the new language? I am a little confused, and I was also contacted by someone who did not like that section. Specifically, the individual was concerned about, if he were running for office in Reno, how it would work with that city's charter.

Larry Lomax, Registrar of Voters, Clark County, Las Vegas, Nevada:

This is the language, which was struck and now reinserted, that directs, if no one gets a majority of the votes in a primary election, the top two voter-getters go forward to the general election. If you take that language out, there is no more language explaining why we are having a primary election, so this is the crux of the matter. In city elections, when they refer to a majority, it means one candidate got 50 percent plus one vote. That is language in statute that the cities use. In our opinion, it is important that this language be put back into the bill.

Assemblyman Ohrenschall:

If a conflict ever arose with the city charter, then the city charter would prevail over the *Nevada Revised Statutes* (NRS).

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada:

In section 3 as we submitted the bill draft, the phrase "except as otherwise provided by city charter" was in the language. I am not sure why that language was removed when it came out of drafting. Because there are variations in charters from city to city, it was clearly our intent that this not usurp the charter, but that this language apply where the charter did not address the issue. If we really want to be clear about this, I think we should get that phrase back in the bill.

Chair Koivisto:

Where would that phrase fit?

David Fraser:

It would fit where it was in our bill originally—at the end of line 41 on page 3. That sentence would just have continued "except as otherwise provided by city charter." Legal may have a place where they like it better.

Chair Koivisto:

Yes, I think you are right. I think that language should be in there.

Assemblyman Settelmeyer:

For clarification, we would be allowing mail ballots only if it was a special election, or in only one ward, or for only one office, or for only one ballot question? The issue concerning the "best interest" of the governing body is no longer in the bill?

Monica Martinez Simmons:

That is correct.

Chair Koivisto:

Are there any other questions from the Committee? [No response.] For the Committee's comfort, what we will do with this bill is wait until we get it back from bill drafting and see what the final bill looks like before bringing it back for a vote. I still see a lot of confused looks. As soon as we can get it back from drafting, we will schedule it again and take a vote on it.

Patrick just offered to prepare the mock-up for us, rather than us waiting for it to come back from the Legal Division. So everyone can see it before we vote on it. That will be faster. Thank you very much

David Fraser:

Thank you to the Committee members for their time, and especially thanks to Patrick Guinan for his solid work on this. He is very good.

Chair Koivisto:

All right, is there anything else to come before the Committee? [No response.] We are adjourned [at 4:39 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments

Date: March 10, 2009

Time of Meeting: 3:54 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|-------------------------|---------------------------------|
| | A | | Agenda |
| | B | | Attendance Roster |
| A.B. 41 | C | Patrick Guinan | Mock-up of the bill |
| A.B. 41 | D | Patrick Guinan | Amendments proposed by the ACLU |
| A.B. 79 | E | Patrick Guinan | Bill summary |