

ASSEMBLY BILL NO. 397—ASSEMBLYMAN MCARTHUR

MARCH 21, 2011

Referred to Committee on Legislative Operations and Elections

SUMMARY—Makes various changes to provisions governing mechanical voting systems. (BDR 24-1022)

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

CONTAINS UNFUNDED MANDATE (§ 4)  
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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

AN ACT relating to elections; limiting the use of mechanical voting systems whereby a vote is cast on a device which directly records the vote electronically to use by persons with disabilities; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes the use of mechanical voting systems. (Chapter 293B of NRS) Under existing law, a mechanical voting system may consist of a system whereby a voter may cast his or her vote: (1) on a device which mechanically or electronically compiles a total of the number of votes cast for each candidate and for or against each measure voted on; or (2) by marking a paper ballot which is subsequently counted on an electronic tabulator, counting device or computer. (NRS 293B.033)

**Section 4** of this bill requires that, except for voting systems provided for voters with disabilities, election officials provide only mechanical voting systems whereby a voter casts a vote by marking a paper ballot which is subsequently counted electronically or mechanically. **Section 4** further requires election officials to provide, for use by persons with disabilities, mechanical voting systems whereby a vote is cast on a device which directly records the vote electronically. The use of such mechanical voting systems is limited to the provision of only the number of such devices required to meet the standards for accessibility of voting systems to persons with disabilities, as set forth in the relevant provisions of the federal Help America Vote Act (42 U.S.C. § 15481(a)(3)(B)), plus additional devices that a county or city clerk may determine are necessary to serve the needs of voters with disabilities at a particular polling place. **Sections 1-3 and 5-22** of this bill make corresponding changes to effectuate the provisions of **section 4**.



\* A B 3 9 7 \*

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

**Section 1.** 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 ~~H~~, *which may consist of the paper ballot itself*; and

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

**Sec. 2.** NRS 293.3604 is hereby amended to read as follows:

293.3604 If ballots which are voted on a mechanical recording device which directly records the votes electronically are used during the period for early voting by personal appearance : ~~{in an election other than a presidential preference primary election:}~~

1. At the close of each voting day, the election board shall:

(a) Prepare and sign a statement for the polling place. The statement must include:

(1) The title of the election;

(2) The number of the precinct or voting district;

(3) The number which identifies the mechanical recording device and the storage device required pursuant to NRS 293B.084;

(4) The number of ballots voted on the mechanical recording device for that day; and

(5) The number of signatures in the roster for early voting for that day.

(b) Secure:

(1) The ballots pursuant to the plan for security required by NRS 293.3594; and



\* A B 3 9 7 \*

(2) Each mechanical voting device in the manner prescribed by the Secretary of State pursuant to NRS 293.3594.

2. At the close of the last voting day, the county clerk shall deliver to the ballot board for early voting:

(a) The statements for all polling places for early voting;

(b) The voting rosters used for early voting;

(c) The storage device required pursuant to NRS 293B.084 from each mechanical recording device used during the period for early voting;

*(d) The ballots voted on a mechanical system whereby a paper ballot is marked and subsequently counted electronically or mechanically;* and

~~(d)~~ (e) Any other items as determined by the county clerk.

3. Upon receipt of the items set forth in subsection 2 at the close of the last voting day, the ballot board for early voting shall:

(a) Sort the items by precinct or voting district;

(b) Count the number of ballots voted by precinct or voting district;

(c) Account for all ballots on an official statement of ballots; and

(d) Place the items in the container provided to transport those items to the central counting place and seal the container with a numbered seal. The official statement of ballots must accompany the items to the central counting place.

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

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

(a) County clerk of each county affected by the recount shall employ a recount board to conduct the recount in the county, and shall act as chair of the recount board unless the recount is for the office of county clerk, in which case the registrar of voters of the county, if a registrar of voters has been appointed for the county, shall act as chair of the recount board. If a registrar of voters has not been appointed for the county, the chair of the board of county commissioners, if the chair is not a candidate on the ballot, shall act as chair of the recount board. If the recount is for the office of county clerk, a registrar of voters has not been appointed for the county and the chair of the board of county commissioners is a candidate on the ballot, the chair of the board of county commissioners shall appoint another member of the board of county commissioners who is not a candidate on the ballot to act as chair of the recount board. A member of the board of county commissioners who is a candidate on the ballot may not serve as a member of the recount board.



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

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

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

4. If a recount is demanded in a county or city using a mechanical voting system, the person who demanded the recount shall select the ballots for the office or ballot question affected from 5 percent of the precincts, but in no case fewer than three precincts, after notification to each candidate for the office or the candidate's authorized representative. The recount board shall examine the selected ballots, including any duplicate or rejected ballots, shall determine whether the ballots have been voted in accordance with this title and shall count the valid ballots by hand. In addition, a recount by computer must be made of all the selected ballots. If the count by hand or the recount by computer of the selected ballots shows a discrepancy equal to or greater than 1 percent or five votes, whichever is greater, 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 county or city clerk shall order a count by hand of all the ballots for that office or ballot question. Otherwise, the county or city clerk shall order a recount by computer of all the ballots for all candidates for the office or all the ballots for the ballot question. *In the case of a mechanical voting system whereby a voter casts a vote by marking a paper ballot which is subsequently counted on an electronic tabulator, counting device or computer, the actual paper ballot must be used in conducting the recount.*

5. The county or city clerk shall unseal and give to the recount board all ballots to be counted.



6. In the case of a demand for a recount affecting more than one county, the demand must be made to the Secretary of State, who shall notify the county clerks to proceed with the recount.

**Sec. 4.** Chapter 293B of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in subsections 2 and 3, a mechanical voting system approved or purchased, as applicable, by the Secretary of State or purchased or adopted, as applicable, by a board of county commissioners, city council or other governing body must be a mechanical voting system whereby a voter casts a vote by marking a paper ballot that is subsequently counted on an electronic tabulator, counting device or computer.*

*2. To meet the standards for accessibility of voting systems to persons with disabilities set forth in 42 U.S.C. § 15481(a)(3)(B), the Secretary of State may approve or purchase, and a board of county commissioners, city council or other governing body of a city may purchase or adopt, a mechanical voting system whereby a voter casts a vote on a device that mechanically or electronically compiles a total of the number of votes cast for each candidate and for or against each measure voted on, for use by persons with disabilities.*

*3. The county clerk or city clerk may provide more than the minimum number, as set forth in 42 U.S.C. § 15481(a)(3)(B), of mechanical recording devices described in subsection 2 at a particular polling place if the county clerk or city clerk projects that a greater number will be required to accommodate the number of persons with disabilities who will vote at that polling place.*

**Sec. 5.** NRS 293B.032 is hereby amended to read as follows:

293B.032 “Mechanical recording device” means a device which ~~mechanically~~:

*1. Is provided at each polling place for use by any voter with a disability; and*

*2. Mechanically* or electronically compiles a total of the number of votes cast for each candidate and for or against each measure voted on.

**Sec. 6.** NRS 293B.050 is hereby amended to read as follows:

293B.050 ~~At~~ *Subject to the provisions of section 4 of this act,* at all statewide, county, city and district elections of any kind held in this State, ballots or votes may be cast, registered, recorded and counted by means of a mechanical voting system.

**Sec. 7.** NRS 293B.105 is hereby amended to read as follows:

293B.105 1. ~~The~~ *Subject to the provisions of section 4 of this act,* the board of county commissioners of any county or the city council or other governing body of any city may purchase and



1 adopt for use at elections any mechanical voting system and  
2 mechanical recording device if the **mechanical voting** system or  
3 **mechanical recording** device is:

4 (a) Approved by the Secretary of State pursuant to subsection 2;  
5 or

6 (b) Specifically authorized by law.

7 ➔ The **mechanical voting** system or **mechanical recording** device  
8 may be used at any or all elections held in the county or city, for  
9 voting, registering and counting votes cast.

10 2. A person who owns or has an interest in a mechanical voting  
11 system or mechanical recording device may submit an application to  
12 the Secretary of State to have the **mechanical voting** system or  
13 **mechanical recording** device examined for approval for use during  
14 the elections of this State. The Secretary of State shall approve or  
15 disapprove the use of such a **mechanical voting** system or  
16 **mechanical recording** device not later than 120 days after the  
17 application is submitted.

18 3. As a condition to approval, the person shall have the  
19 **mechanical voting** system or **mechanical recording** device  
20 independently examined by a person approved by the Secretary of  
21 State. The examiner shall:

22 (a) Review and analyze any electronic or computerized features  
23 of the **mechanical voting** system or **mechanical recording** device;  
24 and

25 (b) Prepare a report of the results of the examination for the  
26 Secretary of State which includes a statement of the examiner's  
27 opinion regarding the feasibility of using such a **mechanical voting**  
28 system or **mechanical recording** device during the elections of this  
29 State with consideration for the safe and proper operation of the  
30 **mechanical voting** system or **mechanical recording** device under  
31 the conditions prescribed by the applicable election laws.

32 4. Any cost for the independent examination of a **mechanical**  
33 **voting** system or **mechanical recording** device must be paid by the  
34 person who submits an application to have the **mechanical voting**  
35 system or **mechanical recording** device approved by the Secretary  
36 of State.

37 5. The Secretary of State shall approve a mechanical voting  
38 system or mechanical recording device for use during the elections  
39 of this State if:

40 (a) The report prepared pursuant to subsection 3 states that the  
41 **mechanical voting** system or **mechanical recording** device can be  
42 used safely and properly in this State; and

43 (b) The Secretary of State determines after independently  
44 examining the **mechanical voting** system or **mechanical recording**  
45 device that it can be used safely and properly in this State.



6. Before a city or county may change or improve a *mechanical voting* system or *mechanical recording* device that has been approved by the Secretary of State, it must obtain approval from the Secretary of State. If any change or improvement does not comply with the requirements of this section, the Secretary of State shall not approve the use or sale of any *mechanical voting* system or *mechanical recording* device that incorporates the change or improvement in this State.

7. The Secretary of State may reexamine a *mechanical voting* system or *mechanical recording* device or any part thereof at any time for the purpose of approving a change or improvement or to ensure that the *mechanical voting* system or *mechanical recording* device continues to comply with the election laws of this State.

8. The Secretary of State and any examiner of a *mechanical voting* system or *mechanical recording* device must not have any pecuniary interest in the *mechanical voting* system or *mechanical recording* device examined.

9. The Secretary of State may establish regulations to carry out the provisions of this section.

**Sec. 8.** NRS 293B.110 is hereby amended to read as follows:

293B.110 A mechanical voting system may be adopted for some of the precincts or districts in the same county or city, while the remainder of the precincts or districts in that county or city may be furnished with paper ballots or any other mechanical voting system *H, subject to the provisions of section 4 of this act.*

**Sec. 9.** NRS 293B.115 is hereby amended to read as follows:

293B.115 The board of county commissioners, city council or other governing body which adopts a mechanical voting system, as soon as practicable after adopting it, shall provide for each polling place one or more mechanical recording devices in complete working order *H for use by persons with disabilities.* When the *mechanical recording* devices are not in use at an election, the board, council or governing body shall take custody of them and of the furniture and equipment of the polling place.

**Sec. 10.** NRS 293B.122 is hereby amended to read as follows:

293B.122 1. The Secretary of State may purchase mechanical recording devices *and any other equipment for mechanical voting systems, including, without limitation, electronic tabulators, counting devices or computers,* and lease them to counties, giving priority to those counties still using paper ballots.

2. The Secretary of State may pay for such *mechanical recording* devices *and equipment* purchased pursuant to subsection 1 out of any money specifically appropriated for that purpose by the Legislature.





**Sec. 11.** NRS 293B.175 is hereby amended to read as follows:

293B.175 In those districts or precincts in which a mechanical voting system is used ~~[ ]~~ *whereby votes are directly recorded electronically*, the list of offices and candidates and the statements of measures appropriate for use with ~~[that] the mechanical voting~~ system in combination with the *mechanical recording* device upon which a vote is registered is an official ballot.

**Sec. 12.** NRS 293B.180 is hereby amended to read as follows:

293B.180 The laws relating to mechanical voting systems *whereby votes are directly recorded electronically* and *to* paper ballots , *including the laws relating to mechanical voting systems whereby a paper ballot is marked and subsequently counted on an electronic tabulator, counting device or computer*, generally, so far as applicable, apply respectively to that part voted upon mechanical recording devices and that part voted upon paper.

**Sec. 13.** NRS 293B.200 is hereby amended to read as follows:

293B.200 The sample ballots must be in full or reduced size and contain suitable illustrated directions for voting on the mechanical recording device ~~[ ]~~ *and for voting with a mechanical voting system whereby a paper ballot is marked and subsequently counted on an electronic tabulator, counting device or computer*.

**Sec. 14.** NRS 293B.300 is hereby amended to read as follows:

293B.300 1. In a primary election, a member of the election board for a precinct shall issue each partisan voter a ballot which contains a distinctive code associated with the major political party of the voter and on which is clearly printed the name of the party.

2. If a mechanical voting system is used in a primary election whereby votes are directly recorded electronically, a member of the election board shall, if the clerk uses voting receipts, in addition to the ballot described in subsection 1, issue each partisan voter *who uses a mechanical recording device* a voting receipt on which is clearly printed the name of the major political party of the voter.

3. The member of the election board shall direct ~~[the] each~~ partisan voter *with a disability* to a mechanical recording device containing the list of offices and candidates arranged for the voter's major political party in the manner provided in NRS 293B.190.

**Sec. 15.** NRS 293B.305 is hereby amended to read as follows:

293B.305 Unless a major political party allows a nonpartisan voter to vote for its candidates:

1. In a primary election, a member of the election board for a precinct shall issue each nonpartisan voter a ballot with a distinctive code and printed designation identifying it as a nonpartisan ballot.

2. If a mechanical voting system is used in a primary election whereby votes are directly recorded electronically, a member of the election board shall, if the clerk uses voting receipts, in addition to





1 the ballot described in subsection 1, issue ~~[the]~~ *a* nonpartisan voter  
2 *who uses a mechanical recording device* a voting receipt with a  
3 printed designation identifying it as a nonpartisan ballot.

4 3. ~~[The]~~ *If a mechanical voting system is used in a primary*  
5 *election whereby votes are directly recorded electronically, a*  
6 member of the election board shall:

7 (a) Direct ~~[the]~~ *each* nonpartisan voter *with a disability* to a  
8 mechanical recording device containing a list of offices and  
9 candidates setting forth only the nonpartisan ballot; or

10 (b) Direct ~~[the]~~ *each* nonpartisan voter *with a disability* to a  
11 mechanical recording device containing a list of offices and  
12 candidates arranged for a partisan ballot, instruct the voter to vote  
13 only the nonpartisan section of the list and advise the voter that any  
14 votes the voter may cast in the partisan section will not be counted.

15 **Sec. 16.** NRS 293B.315 is hereby amended to read as follows:

16 293B.315 Before each voter enters the voting booth ~~[ ]~~  
17 *containing a mechanical recording device*, a member of the  
18 election board shall, so far as possible, inform the voter how to  
19 operate the mechanical recording device and illustrate its operation  
20 upon the demonstration model of the *mechanical recording* device.  
21 If any voter, after entering the voting booth, asks for information, a  
22 member of the election board shall give the voter the necessary  
23 information.

24 **Sec. 17.** NRS 293B.330 is hereby amended to read as follows:

25 293B.330 1. Upon closing of the polls ~~[ ]~~ *where a*  
26 *mechanical voting system is used whereby votes are directly*  
27 *recorded electronically*, the election board shall:

28 (a) Secure all mechanical recording devices against further  
29 voting.

30 (b) ~~[If a mechanical voting system is used whereby votes are~~  
31 ~~directly recorded electronically:~~

32 ~~—(1)]~~ Ensure that each mechanical recording device:

33 ~~[(1)]~~ (1) Provides a record printed on paper of the total  
34 number of votes recorded on the *mechanical recording* device for  
35 each candidate and for or against each measure; and

36 ~~[(2)]~~ (2) Transfers the ballots voted on ~~[that]~~ *the*  
37 *mechanical recording* device to the storage device required  
38 pursuant to NRS 293B.084.

39 ~~[(2)]~~ (c) Count the number of ballots voted at the polling  
40 place.

41 ~~[(3)]~~ (d) Account for all ballots on the statement of ballots.

42 ~~[(4)]~~ (e) Place all records printed on paper provided by the  
43 mechanical recording devices, all storage devices which store the  
44 ballots voted on the mechanical recording devices, and any other  
45 records, reports and materials as directed by the county clerk into



1 the container provided by the county clerk to transport those items  
2 to a central counting place and seal the container.

3 ~~(e)~~ (f) Record the number of voters on a form provided by the  
4 county clerk.

5 2. If a difference exists between the number of voters and the  
6 number of ballots voted, the election board shall report the  
7 difference and any known reasons for the difference, in writing, to  
8 the county clerk.

9 3. After closing the polls, the election board shall:

10 (a) Compare the quantity of the supplies furnished by the county  
11 clerk with the inventory of those supplies; and

12 (b) Note any shortages.

13 4. The county clerk shall allow members of the general public  
14 to observe the handling of the ballots pursuant to subsection 1 if  
15 those members do not interfere with the handling of the ballots.

16 **Sec. 18.** NRS 293B.335 is hereby amended to read as follows:

17 293B.335 1. The chair and at least one other member of the  
18 election board shall deliver the sealed container *and all ballots*  
19 *voted on a mechanical voting system whereby a paper ballot is*  
20 *marked and subsequently counted on an electronic tabulator,*  
21 *counting device or computer* to a receiving center or to the central  
22 counting place, as directed by the county clerk. If practicable, the  
23 other board member must be of a different political party than the  
24 chair.

25 2. The chair shall provide for the transportation or other  
26 disposition of all other supplies and election materials as directed by  
27 the county clerk.

28 3. Any member of the general public may observe the delivery  
29 of a sealed container to a receiving center or to the central counting  
30 place if he or she does not interfere with the delivery of the sealed  
31 container.

32 **Sec. 19.** NRS 293C.3604 is hereby amended to read as  
33 follows:

34 293C.3604 If ballots which are voted on a mechanical  
35 recording device which directly records the votes electronically are  
36 used during the period for early voting by personal appearance : ~~in~~  
37 ~~an election other than a presidential preference primary election;~~

38 1. At the close of each voting day, the election board shall:

39 (a) Prepare and sign a statement for the polling place. The  
40 statement must include:

41 (1) The title of the election;

42 (2) The number of the precinct or voting district;

43 (3) The number which identifies the mechanical recording  
44 device and the storage device required pursuant to NRS 293B.084;



(4) The number of ballots voted on the mechanical recording device for that day; and

(5) The number of signatures in the roster for early voting for that day.

(b) Secure:

(1) The ballots pursuant to the plan for security required by NRS 293C.3594; and

(2) Each mechanical voting device in the manner prescribed by the Secretary of State pursuant to NRS 293C.3594.

2. At the close of the last voting day, the city clerk shall deliver to the ballot board for early voting:

(a) The statements for all polling places for early voting;

(b) The voting rosters used for early voting;

(c) The storage device required pursuant to NRS 293B.084 from each mechanical recording device used during the period for early voting;

*(d) The ballots voted on a mechanical system whereby a paper ballot is marked and subsequently counted on an electronic tabulator, counting device or computer; and*

~~[(4)]~~ (e) Any other items as determined by the city clerk.

3. Upon receipt of the items set forth in subsection 2 at the close of the last voting day, the ballot board for early voting shall:

(a) Sort the items by precinct or voting district;

(b) Count the number of ballots voted by precinct or voting district;

(c) Account for all ballots on an official statement of ballots; and

(d) Place the items in the container provided to transport those items to the central counting place and seal the container with a number seal. The official statement of ballots must accompany the items to the central counting place.

**Sec. 20.** NRS 293C.620 is hereby amended to read as follows:

293C.620 1. At each election, a member of the election board for a precinct shall issue each voter a ballot.

2. If a mechanical voting system is used in a primary city election whereby votes are directly recorded electronically, a member of the election board shall, if the clerk uses voting receipts, in addition to the ballot described in subsection 1, issue the voter a voting receipt.

3. ~~[(The)]~~ *If a mechanical voting system is used whereby votes are directly recorded electronically, a* member of the election board shall direct the voter to a mechanical recording device containing a list of offices and candidates.





1        2. The chair shall provide for the transportation or other  
2 disposition of all other supplies and election materials as directed by  
3 the city clerk.

4        3. Any member of the general public may observe the delivery  
5 of a sealed container to a receiving center or to the central counting  
6 place if he or she does not interfere with the delivery of the sealed  
7 container.

8        **Sec. 23.** The provisions of NRS 354.599 do not apply to any  
9 additional expenses of a local government that are related to the  
10 provisions of this act.

11        **Sec. 24.** This act becomes effective on:

12        1. August 1, 2014, for the purpose of enforcement of the  
13 requirements concerning the types of mechanical voting systems  
14 that must be available for use at all elections.

15        2. October 1, 2011, for all other purposes, including the  
16 adoption of regulations and performance of any other preparatory  
17 administrative tasks that are necessary to carry out the provisions of  
18 this act.

