

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

**Seventy-Seventh Session
April 23, 2013**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Pat Spearman at 9:12 a.m. on Tuesday, April 23, 2013, 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 Pat Spearman, Chair
Senator Mark A. Manendo, Vice Chair
Senator Kelvin Atkinson
Senator Barbara K. Cegavske
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15

STAFF MEMBERS PRESENT:

Carol M. Stonefield, Policy Analyst
Melissa Mundy, Counsel
Kaci Kerfeld, Committee Secretary

OTHERS PRESENT:

Scott F. Gilles, Deputy for Elections, Office of the Secretary of State
Alan Glover, Clerk/Recorder, Carson City
Jennifer Batchelder, Nevada Women's Lobby
Stacy Shinn, Progressive Leadership Alliance of Nevada
Janine Hansen, Nevada Families; Independent American Party
Barry Gold, AARP Nevada
Patrick Sanderson, Nevada Alliance for Retired Americans

Chair Spearman:

I will open the hearing on Assembly Bill (A.B.) 175.

ASSEMBLY BILL 175 (1st Reprint): Revises provisions relating to uniformed-service and overseas voters. (BDR 24-635)

Assemblyman Elliot T. Anderson (Assembly District No. 15):

First, I would like to recap the 2011 Legislative Session. During that Session, this body passed the Uniformed Military and Overseas Absentee Voters Act, which has been codified in *Nevada Revised Statutes* (NRS) 293D. This created a system whereby covered voters, including uniformed military, their spouses and dependents and overseas voters can vote more easily. It allowed a covered voter to receive ballot materials electronically, by email or fax. Additionally, it allowed the person to register using a federal postcard for covered voters without showing up in person before voting. It also required the declarations and affidavits to use the provisions of the Act and prescribed penalties for a person not eligible to use the Act. Additionally, the Act, as written, allowed a covered voter to print, fill out and either scan and email or mail the ballot back to the local election official.

After electronic or mail delivery, the local election official duplicates the unofficial ballot and turns it into an official ballot, which is counted. In the 2012 general election, over 6,000 covered voters received general election ballots, and 5,300 people turned them in. Roughly 3,000 were returned by email. The Act exempted covered voters from many of our existing election requirements in NRS 293 because of the unique status of covered voters making it impractical to subject the provisions of the Act to our existing requirements.

The Act greatly helped many military and overseas voters by shortening the time to receive election materials. Previously, covered voters could have problems even receiving mail, let alone sending back the election materials. This made it much easier for people to vote. The Act, while it is good, is in need of a few improvements.

There are a few shortcomings in the Act. The Act requires local election officials to transmit ballot materials 45 days prior to an election. For some covered voters, mainly military voters, the provisions did not go far enough. For some covered voters with easy access to printers and scanners and the availability to shorten that time, it is easy to print and fill out their ballots and either email, fax

or mail the ballots back. For those covered voters in remote locations, it is somewhat more difficult to get access to scanners or printers, mainly those in the military. Even at large military bases in the continental U.S. it can be difficult, not to mention those deployed overseas in combat. I can speak personally to those challenges.

The solution is A.B. 175. Most bases, even at forward locations overseas, have Internet access. Assembly Bill 175 attempts to align our military voting chapter with the reality that the military experiences on the ground. The heart of the bill essentially envisions an election portal in the future; for now, it allows a covered voter to sign ballot materials electronically. Then, this voter only needs Internet access to submit the ballot.

Sections 1 through 9, like the 2011 Act, except the provisions of this bill from our existing election chapter, NRS 293. It makes clear that this bill, along with NRS 293D as written, governs covered voters. This is necessary to ensure clarity for election officials when dealing with covered voters to make one clear system. Sections 11 and 12 create new authentication standards for covered voters in order to allow a mechanism for covered voters to sign their ballots electronically without having to have printers and scanners. A digital signature is an electronic signature, issued for use by one person. An electronic signature is best understood as a photo or scan of someone's signature attached to a ballot. Section 13 creates the authority for a covered voter to sign his or her ballot using an electronic or digital signature. Section 15 allows a covered voter to send in ballot materials electronically, in addition to receiving the documents electronically. Section 15 also allows a covered voter to sign any document required to participate in an election electronically. These documents are materials required for voting which include, but are not limited to, forms for registering to vote, applying for a military absentee ballot and voting via the actual ballot itself. Sections 16 and 17 update the process of registering to vote and requesting a military ballot, respectively, to incorporate the electronic signing of election-related materials.

Mississippi, Montana and North Dakota all have online systems that do not require signatures. Frequently asked questions from Montana's Secretary of State have been provided ([Exhibit C](#)).

Scott F. Gilles (Deputy for Elections, Office of the Secretary of State):

The Secretary of State's Office supports this bill. It will allow our Nevada Uniformed and Overseas Citizen Absentee Voting Act voters, particularly the military voters, to more easily register, request their ballots and cast their ballots for Nevada's elections. Provisions in this bill that allow our clerks to accept digital or electronic signatures will enable the Secretary of State's Office to establish a system for the military and overseas voters to receive and cast their ballots without the need for printers or scanners. They can currently request and send their ballots back by email, but when they receive those ballots, they have to print, sign and either scan or mail them back. This legislation enables us to accept a digital or electronic signature which would remove the need for a printer and scanner. Printers and scanners may not always be available, and in many cases are not available. There is no fiscal note for this bill. The bill that would be done in our Office would be handled internally with our staff resources. This is enabling legislation. We foresee expanding the current process and creating a type of portal for the Absentee Voting Act voters to access their ballots. Without this legislation, they could still send in their ballots with electronic or digital signatures, but the key step is our Office creating this portal where they can receive and send ballots electronically. Assemblyman Anderson mentioned that one of the states already doing this is Montana. We have the benefit of having Justus Wendland in our Office, who oversaw that project in Montana.

Alan Glover (Clerk/Recorder, Carson City):

The clerks support A.B. 175, and we think it will be a big help to us.

Jennifer Batchelder (Nevada Women's Lobby):

As a military spouse who has been through 5 moves and 11 deployments, I can tell you that this bill will greatly help not only members of the Army and Air Force, but also members of the Navy and Marine Corps who are often aboard ships during election periods. Mail can be hard to get to them, so we fully support this bill.

Stacy Shinn (Progressive Leadership Alliance of Nevada):

We also support A.B. 175. We are in support of decreasing any barriers to voting, especially for a population that gives their lives for our Country.

Janine Hansen (Nevada Families; Independent American Party):

We fully support A.B. 175.

Chair Spearman:

I will now close the hearing on A.B. 175 and open the hearing on A.B. 108.

ASSEMBLY BILL 108 (1st Reprint): Revises provisions relating to the eligibility to vote of certain persons. (BDR 24-267)

Assemblyman Elliot T. Anderson (Assembly District No. 15):

Assembly Bill 108 is designed to set a standard to protect the right to vote. This bill stems from a couple of provisions of law that need to be synthesized. The Nevada Constitution, Article 2, section 1 states that “no person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector.” The Nevada Constitution specifies that those who are not mentally competent cannot vote but does not define what that means. However, it does generally reference a procedure by which to find someone to be mentally incompetent, the adjudication language.

Statute does not contain a clear standard. Subsection 2 of NRS 293.540 states that a county clerk shall cancel the registration of a person “if the insanity or mental incompetence of the person registered is legally established.” However, it does not say how it is established, reference the procedure or what it means to be mentally incompetent. It does not give substantive standard. The NRS 293.542 gives a bit more information, at least referencing a procedure to be followed at the district court level. However, it still fails to specify a substantive mental incompetence standard. This confusion causes problems in practice. Neither a procedural or substantive standard have been well defined by law, so everyone has a different idea of what it means. I have heard credible reports of State agencies telling people in guardianships that they could not register to vote because guardianship means they are considered mentally incompetent. Limited guardianships exist for physical disabilities, for example. This is not accurate. These reports started my interest in this bill. After starting work on this bill, I also discovered practice differences between Washoe County and Clark County District Courts regarding mental incompetence and guardianships. In order to sort this out, I gathered the guardianship bar during the interim to work on a standard, many of whom were here in support in the Assembly, but the Clark County and Washoe County public guardians cannot be here today. They did inform me that they are still in support.

There is a legal problem with this confusion. The moral problem is clear, but the legal problem also deserves consideration. The Fourteenth Amendment to the

U.S. Constitution states that “no state shall ... deprive any person of life, liberty, or property, without due process of law.” “Due process of law” has generally been defined as notice of the deprivation and an opportunity to be heard before the state effectuates the deprivation. A fair amount of litigation exists nationwide considering the topic of improper deprivations of the fundamental right to vote. Our procedure to ensure due process is not clear, and jurisdictions practice differently. We have no actual substantive standard to guide the courts which could lead to widely varying outcomes during adjudication and equal protection concerns.

The solution is a balancing act synthesizing those two provisions, our Nevada Constitution and the U.S. Constitution’s Fourteenth Amendment. This is not a new question. Procedures, definitions and best practices exist. The American Bar Association is staffed with legal experts and has developed standards to satisfy current legal requirements and allow the state to legally effectuate a deprivation of the fundamental right to vote based on mental incompetence, as articulated in our Constitution. These provisions include ensuring the exclusion is based on a determination by a court of competent jurisdiction; ensuring appropriate due process protections have been afforded; ensuring the court finds that the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process; and ensuring the findings are established by clear and convincing evidence.

This brings us to the bill. This standard is placed into the applicable provisions of NRS 293, the elections and voter registration chapter, and NRS 159, the guardianships chapter. The language is placed in the guardianship chapter to avoid confusion in the future, in addition to defining the standard in the voter registration portion of the elections chapter. I accepted a friendly amendment from the Secretary of State on the Assembly side regarding uniform registration canceling and notification procedures. That ensures that if one county clerk and one district court cancel registration, the Secretary of State’s Office gets the information so everything speaks to each other. That is also the case for when a court finds someone mentally competent after previously finding the person incompetent.

Mr. Gilles:

The Secretary of State’s Office supports this bill. It is good policy that creates a much more specific scenario for when and how a clerk may cancel a voter registration record from an administrative standpoint. This bill removes any gray

area as to when a clerk must or may cancel this type of registration. This bill would require specific direction, explicitly informing the clerks who are trying to deal with this situation when presented with the fact of a particular voter. This also provides direction to the courts and attorneys who handle these types of matters as to what types of language will eventually be needed in a final court order if the intent is to, under this standard, confirm that the individual's registration must be cancelled. It will benefit the legal system as well. Amendments passed out of the Assembly were related to the notice required to be sent to the Secretary of State. This will assist clerks in the county where the individual resides, giving them the information whether the individual should be cancelled from the records or allowed to reregister. Currently, the other counties would not necessarily get that notice and may not be aware of that individual's status needs to be cancelled or the entitlement needs to be reregistered. By providing this certified order in the notice requirement that the courts send to our office, we can use our statewide system to automatically generate this information out to all counties about that individual's status.

Chair Spearman:

The system you just described probably sounds more elaborate than it is. It sounds like different protocols are interconnected. A lot of what you are talking about seems like protocols could be transferrable. I hope you will be actively working with some of the other agencies.

Mr. Gilles:

We do work with other agencies to the extent that we can receive whatever data—including the bill regarding Social Security Administration information—in a format we can utilize and automatically transmit that information on individual voter death records, felony convictions, etc., to the counties. We utilize the system in place to the extent we can.

Barry Gold (AARP Nevada):

I will read from prepared testimony in favor of A.B. 108 ([Exhibit D](#)).

Mr. Glover:

We support this bill. It gives us a standard to work off that we have been lacking since the State Constitution was amended. This will go a long way in helping us set the standard on who can vote and who cannot.

Ms. Shinn:

We are always in support of expanding voting rights and ballot accessibility. I am a licensed social worker in Nevada, and my background is in working with individuals who have severe and persistent mental illness and developmental disabilities, so this population is near and dear to my heart. Current mental disability rights policy is about community integration, living similar life experiences and making contributions to society, such as voting. Assembly Bill 108 is a protection for this vulnerable population as part of our community, and this is about that population's right to vote.

Patrick Sanderson (Nevada Alliance for Retired Americans):

I agree with the statements made before me in support of A.B. 108.

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Chair Spearman:

One thing that has always concerned me is that somehow in our society, we look at growing older as some kind of disease when it is not. People may be physically challenged but have full mental capacity. This meeting is now adjourned at 9:38 a.m.

RESPECTFULLY SUBMITTED:

Kaci Kerfeld,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
A.B. 175	C	4	Assemblyman Elliot T. Anderson	Military and Overseas Voters Guidance from Montana
A.B. 108	D	1	Barry Gold	Prepared Testimony