

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

**Seventy-Seventh Session
April 25, 2013**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Pat Spearman at 9:06 a.m. on Thursday, April 25, 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 Pat Hickey, Assembly District No. 25

STAFF MEMBERS PRESENT:

Carol M. Stonefield, Policy Analyst
Melissa Mundy, Counsel
Mary Moak, Committee Secretary

Chair Spearman:

I will call this meeting of the Senate Committee on Legislative Operations and Elections to order. We will open the hearing on Assembly Bill (A.B.) 407.

ASSEMBLY BILL 407 (1st Reprint): Revises provisions governing residency requirements for candidates for public office. (BDR 23-606)

Assemblyman Pat Hickey (Assembly District No. 25):

This Committee is the eyes, ears and conscience for this body. We deal with things that relate to how we govern and regulate ourselves. Assembly Bill 407

addresses some ambiguity and a problem that has existed for some time in Nevada about whether candidates actually live in the districts they are elected to represent. This bill takes a step forward in clarifying that issue.

Assembly Bill 407 amends State law in how a person's residency is determined for eligibility to hold public office by deleting a reference to a person's "actual residency" and the provisions relative to a person with multiple residences. The proposed language states "that place where the person has been actually, physically and corporeally" living within the State. In other words, where a person actually lives. The bill reiterates how important it is we represent districts where we actually live, shop, worship and our children go to school. This is important in a representative democracy such as ours.

Section 1, subsection 3 of the bill provides this body will determine the qualifications of its members. Unless a judicial decision is made by the fourth Friday in June of the general election year, a district court does not have jurisdiction in an action to determine the residency of a candidate.

A candidate's residency status can be contested through the Secretary of State's Office. The case would be brought to this body and the Committee on Legislative Operations and Elections, at the beginning of session, to review whether that person was qualified.

In section 14, subsection 5, lines 14 and 15, we struck the wording, "the remedy may include, without limitation any" costs incurred by a party connected with the contest. It was felt this had a chilling effect on anybody who might want to contest a candidate's residency or election. The person who did not prevail would have to pay attorney's fees for both sides, for Legislative Counsel Bureau's time and even the Legislator's time. Section 14 has been amended to say "If the house finds that the contest or the defense of the contest was brought or maintained without reasonable ground or to harass the prevailing party, the house may require the party who is not the prevailing party to pay." The costs are defined in *Nevada Revised Statutes* (NRS) 18.

There needs to be a certain burden for people who bring contests without merit. Making this specific and removing "without limitation any" does not prevent anyone from saying I think I am right on this, but I could pay \$20,000 to \$50,000 with it being unlimited. This would not be fair or just to someone who wanted to make the contest.

The spirit of A.B. 407 is to clarify the importance of candidates' actual residences, not only when they file for election but when they are elected and are representing their districts. Passing this bill makes us look better. It makes it clear to potential candidates that we all want to run and represent the people where we live.

Senator Settlemeyer:

For me, the aspects of section 14 would be hypocritical. You have all heard me stand up on the Senate Floor and talk about attorney's fees. Here we are inserting it in this section, which is unusual to have in this section of law. You are stating this body can determine if attorney's fees are acceptable, and that just seems off base. I do not think the House of origin decides whether to award attorney's fees anywhere else in statute.

Assemblyman Hickey:

It did not seem fair that someone bringing a contest could be burdened with high fees not determined in any rational way by just saying "without limitation." The purpose of putting those fees in is to have some protection against frivolous lawsuits. The person filing the claim has a certain burden; if he or she is to bring a contest forward, it better have some merit. If it is determined that the claim did not, then he or she pays for the privilege of wasting the Legislator's time.

This inclusion is up to the Committee. The language was added by the suggestion of legal staff while crafting the amendment that is now part of the bill. We might want to go back and see if it was appropriate. That is not the most important part of the bill. I would hate to see the bill not pass just because of that one element.

Chair Spearman:

Another bill came before this body relative to people making accusations or requesting an ethics review within a certain period of time during a campaign. Did we have attorney's fees attached to that? No. Attorney's fees were not attached to that.

If we do not put attorney's fees in legislation, how else could we accomplish the intent of what you are trying to do with this particular aspect?

Assemblyman Hickey:

You can take that out. If you remove the attorney's fees, that would just be part of the burden of justice. I would not want to see us having to spend a lot of money, especially if the contests were frivolous. There has to be some lift for a person to bring a charge like this. If there is no expense or potential expense involved, that might invite problems. I was trying to deal with existing language in NRS 293. Any cost seems to be a burden on somebody trying to make the case, and maybe he or she is right.

Chair Spearman:

Senator Settelmeyer, do you have any suggestions with regard to ...

Senator Settelmeyer:

What we have done here is create an accounting nightmare. By saying "any costs as defined in NRS 18.005" up to \$500, then you have to actually look in NRS 18.005 and list out how much you used for the phone, how much you used for jury fees, how much you used for this and how much you used for that. It would be cleaner if we struck that and said any cost actually and necessarily incurred in the amount not to exceed whatever number he wants to keep at \$4,500 and strike section 14, subsection 5, paragraphs (b) and (c). That would solve my issues. Then you do not have an accounting nightmare, need to look at NRS 18.005 to determine if postage is allowable or whether that falls under the category of attorney's fees or another category of NRS 18.005. To me, it just makes it cleaner.

Assemblyman Hickey:

I would not have a problem with that.

Chair Spearman:

Is that amenable to you?

Assemblyman Hickey:

Yes.

Chair Spearman:

I will declare the hearing on A.B. 407 concluded. Assemblyman Hickey, please get with Senator Settelmeyer so you can agree upon some language and have it ready for us when we bring it back for a work session.

We will open our work session on A.B. 175.

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

Carol M. Stonefield (Policy Analyst):

Assembly Bill 175, brought to the Committee by Assemblyman Elliot T. Anderson, Assembly District No. 15, was heard on April 23. The bill proposes to revise provisions relating to "covered voters" ([Exhibit C](#)). There were no amendments offered, no opposition in testimony and the bill passed unanimously in the Assembly.

Chair Spearman:

Will A.B. 175 cover emergency deployments within a certain time frame of the election? A service member may not have asked for a ballot but receives orders on Sunday before the Tuesday election. He or she has been dispatched to a new assignment and will be gone by Election Day. Will these provisions cover this situation?

Melissa Mundy (Counsel):

I believe these provisions would cover that situation.

SENATOR MANENDO MOVED TO DO PASS A.B. 175.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Senate Committee on Legislative Operations and Elections
April 25, 2013
Page 6

Chair Spearman:

I declare this meeting of the Senate Committee on Legislative Operations and Elections adjourned at 9:28 a.m.

RESPECTFULLY SUBMITTED:

Mary Moak,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 175	C	1	Carol M. Stonefield	Work Session Document