

ASSEMBLY BILL NO. 381—ASSEMBLYWOMAN KIRKPATRICK

MARCH 17, 2015

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to elections.  
(BDR 24-966)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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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; extending the deadlines for filling vacancies in certain nominations and for making changes to the ballot of a general election; eliminating the deadline for an elector to file a written challenge on the grounds that a candidate fails to meet any qualification required for the office which the candidate is seeking; requiring a court to order that a candidate whose qualifications to hold office are successfully challenged pay certain fees, costs and penalties; revising the requirements for the Secretary of State, county clerk and city clerk to notify voters of the disqualification of a candidate; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law sets forth procedures for filling certain vacancies in a nonpartisan office, nomination for a nonpartisan office and major political party nominations for a partisan office that occur before 5 p.m. on the fourth Friday in June of the year in which the general election is held. (NRS 293.165, 293.166, 293.368) **Sections 1, 2 and 5** of this bill extend the deadline for filling these vacancies to July 31 of the year in which the general election is held.

Existing law authorizes an elector to submit a written challenge to a person's candidacy on the grounds that the person fails to meet any qualification required for the office; the deadline for filing a written challenge is 5 days after the last day a person may withdraw his or her candidacy. (NRS 293.182, 293C.186) **Sections 3 and 6** of this bill eliminate the deadline for an elector to file a written challenge. **Sections 3 and 6** also require that if a court determines by a preponderance of the evidence that the challenge to a person's candidacy is valid or that the person otherwise fails to meet any qualification required for the office, the court must order the challenged person to pay: (1) the attorney's fees and court costs of the elector who filed the challenge; and (2) a civil penalty of not less than \$5,000.



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17 If a person is disqualified from entering upon the duties of office, existing law  
18 requires the Secretary of State and the county clerk or city clerk, as applicable, to  
19 post a sign at each polling place where a person's name will appear on the ballot  
20 informing voters that the person is disqualified from entering upon the duties of  
21 office. (NRS 293.184, 293C.1865) **Sections 4 and 7** of this bill require that the  
22 Secretary of State, county clerk or city clerk, as applicable, also notify the voters in  
23 any other manner ordered by the court that the person is disqualified from entering  
24 upon the duties of office.

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

1 **Section 1.** NRS 293.165 is hereby amended to read as follows:

2 293.165 1. Except as otherwise provided in NRS 293.166, a  
3 vacancy occurring in a major or minor political party nomination for  
4 a partisan office may be filled by a candidate designated by the  
5 party central committee of the county or State, as the case may be,  
6 of the major political party or by the executive committee of the  
7 minor political party subject to the provisions of subsections 3, 4  
8 and 5.

9 2. A vacancy occurring in a nonpartisan office or nomination  
10 for a nonpartisan office after the close of filing and before 5 p.m. ~~of~~  
11 ~~the fourth Friday in June~~ **on July 31** of the year in which the  
12 general election is held must be filled by the person who receives or  
13 received the next highest vote for the nomination in the primary  
14 election if a primary election was held for that nonpartisan office. If  
15 no primary election was held for that nonpartisan office or if there  
16 was not more than one person who was seeking the nonpartisan  
17 nomination in the primary election, a person may become a  
18 candidate for the nonpartisan office at the general election if the  
19 person files a declaration of candidacy or acceptance of candidacy,  
20 and pays the fee required by NRS 293.193, on or after 8 a.m. on the  
21 third Monday in June and before 5 p.m. on the fourth Friday in June.

22 3. If a vacancy occurs in a major political party nomination for  
23 a partisan office after the primary election and before 5 p.m. on ~~the~~  
24 ~~fourth Friday in June~~ **July 31** of the year in which the general  
25 election is held and:

26 (a) The vacancy occurs because the nominee dies or is  
27 adjudicated insane or mentally incompetent, the vacancy may be  
28 filled by a candidate designated by the party central committee of  
29 the county or State, as the case may be, of the major political party.

30 (b) The vacancy occurs for a reason other than the reasons  
31 described in paragraph (a), the nominee's name must remain on the  
32 ballot for the general election and, if elected, a vacancy exists.

33 4. No change may be made on the ballot for the general  
34 election after 5 p.m. on ~~the fourth Friday in June~~ **July 31** of the



1 year in which the general election is held. If, after that time and  
2 date:

3 (a) A nominee dies or is adjudicated insane or mentally  
4 incompetent; or

5 (b) A vacancy in the nomination is otherwise created,  
6 ➔ the nominee's name must remain on the ballot for the general  
7 election and, if elected, a vacancy exists.

8 5. All designations provided for in this section must be filed on  
9 or before 5 p.m. on ~~the fourth Friday in June~~ **July 31** of the year in  
10 which the general election is held. In each case, the statutory filing  
11 fee must be paid and an acceptance of the designation must be filed  
12 on or before 5 p.m. on the date the designation is filed.

13 **Sec. 2.** NRS 293.166 is hereby amended to read as follows:

14 293.166 1. A vacancy occurring in a party nomination for the  
15 office of State Senator, Assemblyman or Assemblywoman from a  
16 legislative district comprising more than one county may be filled as  
17 follows, subject to the provisions of subsections 2, 3 and 4. The  
18 county commissioners of each county, all or part of which is  
19 included within the legislative district, shall meet to appoint a  
20 person who is of the same political party as the former nominee and  
21 who actually, as opposed to constructively, resides in the district to  
22 fill the vacancy, with the chair of the board of county  
23 commissioners of the county whose population residing within the  
24 district is the greatest presiding. Each board of county  
25 commissioners shall first meet separately and determine the single  
26 candidate it will nominate to fill the vacancy. Then, the boards shall  
27 meet jointly and the chairs on behalf of the boards shall cast a  
28 proportionate number of votes according to the percent, rounded to  
29 the nearest whole percent, which the population of its county is of  
30 the population of the entire district. Populations must be determined  
31 by the last decennial census or special census conducted by the  
32 Bureau of the Census of the United States Department of  
33 Commerce. The person who receives a plurality of these votes is  
34 appointed to fill the vacancy. If no person receives a plurality of the  
35 votes, the boards of county commissioners of the respective counties  
36 shall each as a group select one candidate, and the nominee must be  
37 chosen by drawing lots among the persons so selected.

38 2. If a vacancy occurs in a party nomination for the office of  
39 State Senator, Assemblyman or Assemblywoman from a legislative  
40 district comprising more than one county after the primary election  
41 and before 5 p.m. on ~~the fourth Friday in June~~ **July 31** of the year  
42 in which the general election is held and:

43 (a) The vacancy occurs because the nominee dies or is  
44 adjudicated insane or mentally incompetent, the vacancy may be  
45 filled pursuant to the provisions of subsection 1.



(b) The vacancy occurs for a reason other than the reasons described in paragraph (a), the nominee's name must remain on the ballot for the general election and, if elected, a vacancy exists.

3. No change may be made on the ballot for the general election after 5 p.m. on ~~the fourth Friday in June~~ **July 31** of the year in which the general election is held. If, after that time and date:

(a) A nominee dies or is adjudicated insane or mentally incompetent; or

(b) A vacancy in the nomination is otherwise created, the nominee's name must remain on the ballot for the general election and, if elected, a vacancy exists.

4. The designation of a nominee pursuant to this section must be filed with the Secretary of State on or before 5 p.m. on ~~the fourth Friday in June~~ **July 31** of the year in which the general election is held, and the statutory filing fee must be paid with the designation.

**Sec. 3.** NRS 293.182 is hereby amended to read as follows:

293.182 1. After a person files a declaration of candidacy or an acceptance of candidacy to be a candidate for an office, ~~and not later than 5 days after the last day the person may withdraw his or her candidacy pursuant to NRS 293.202,~~ an elector may file with the filing officer for the office a written challenge of the person on the grounds that the person fails to meet any qualification required for the office pursuant to the Constitution or a statute of this State, including, without limitation, a requirement concerning age or residency. Before accepting the challenge from the elector, the filing officer shall notify the elector that if the challenge is found by a court to be frivolous, the elector may be required to pay the reasonable attorney's fees and court costs of the challenged person.

2. A challenge filed pursuant to subsection 1 must:

(a) Indicate each qualification the person fails to meet;

(b) Have attached all documentation and evidence supporting the challenge; and

(c) Be in the form of an affidavit, signed by the elector under penalty of perjury.

3. Upon receipt of a challenge pursuant to subsection 1:

(a) The Secretary of State shall immediately transmit the challenge to the Attorney General.

(b) A filing officer other than the Secretary of State shall immediately transmit the challenge to the district attorney.

4. If the Attorney General or district attorney determines that probable cause exists to support the challenge, the Attorney General or district attorney shall, not later than 5 working days after receiving the challenge, petition a court of competent jurisdiction to



1 order the person to appear before the court. Upon receipt of such a  
2 petition, the court shall enter an order directing the person to appear  
3 before the court at a hearing, at a time and place to be fixed by the  
4 court in the order, to show cause why the challenge is not valid. A  
5 certified copy of the order must be served upon the person. The  
6 court shall give priority to such proceedings over all other matters  
7 pending with the court, except for criminal proceedings.

8 5. If, at the hearing, the court determines by a preponderance of  
9 the evidence that the challenge is valid or that the person otherwise  
10 fails to meet any qualification required for the office pursuant to the  
11 Constitution or a statute of this State, or if the person fails to appear  
12 at the hearing:

13 (a) The name of the person must not appear on any ballot for the  
14 election for the office for which the person filed the declaration of  
15 candidacy or acceptance of candidacy; ~~and~~

16 (b) The person is disqualified from entering upon the duties of  
17 the office for which he or she filed the declaration of candidacy or  
18 acceptance of candidacy ~~and~~ ;

19 (c) *The court shall order that the challenged person pay the*  
20 *attorney's fees and court costs of the elector who filed the*  
21 *challenge; and*

22 (d) *The court shall order the person to pay to the State of*  
23 *Nevada a civil penalty of not less than \$5,000. Any civil penalty*  
24 *collected pursuant to this paragraph must be deposited by the*  
25 *Attorney General or district attorney, as applicable, for credit to*  
26 *the State General Fund in the bank designated by the State*  
27 *Treasurer.*

28 6. If, at the hearing, the court determines that the challenge is  
29 frivolous, the court may order the elector who filed the challenge to  
30 pay the reasonable attorney's fees and court costs of the challenged  
31 person.

32 **Sec. 4.** NRS 293.184 is hereby amended to read as follows:

33 293.184 1. In addition to any other penalty provided by law,  
34 if a person willfully files a declaration of candidacy or acceptance of  
35 candidacy knowing that the declaration of candidacy or acceptance  
36 of candidacy contains a false statement:

37 (a) Except as otherwise provided in NRS 293.165 and 293.166,  
38 the name of the person must not appear on any ballot for the election  
39 for which the person filed the declaration of candidacy or  
40 acceptance of candidacy; and

41 (b) The person is disqualified from entering upon the duties of  
42 the office for which he or she was a candidate.

43 2. If the name of a person who is disqualified from entering  
44 upon the duties of an office pursuant to subsection 1 appears on a  
45 ballot for the election is disqualified because the deadline set forth



1 in NRS 293.165 and 293.166 for making changes to the ballot has  
2 passed, the Secretary of State and county clerk must ~~post~~ :

3 *(a) Post* a sign at each polling place where the person's name  
4 will appear on the ballot informing voters that the person is  
5 disqualified from entering upon the duties of office ~~+~~ ; and

6 *(b) Notify voters in any other manner required by a court*  
7 *order that the person is disqualified from entering upon the duties*  
8 *of office.*

9 **Sec. 5.** NRS 293.368 is hereby amended to read as follows:

10 293.368 1. Except as otherwise provided in subsection 4 of  
11 NRS 293.165, if a candidate on the ballot at a primary election dies  
12 after 5 p.m. of the second Tuesday in April, the deceased  
13 candidate's name must remain on the ballot and the votes cast for  
14 the deceased candidate must be counted in determining the  
15 nomination for the office for which the decedent was a candidate.

16 2. If the deceased candidate on the ballot at the primary  
17 election receives the number of votes required to receive the  
18 nomination to the office for which he or she was a candidate, except  
19 as otherwise provided in subsection 2 of NRS 293.165, the deceased  
20 candidate shall be deemed nominated and the vacancy in the  
21 nomination must be filled as provided in NRS 293.165 or 293.166.  
22 If the deceased person was a candidate for a nonpartisan office, the  
23 nomination must be filled pursuant to subsection 2 of NRS 293.165.

24 3. Whenever a candidate whose name appears upon the ballot  
25 at a general election dies after 5 p.m. on ~~the fourth Friday in June~~  
26 *July 31* of the year in which the general election is held, the votes  
27 cast for the deceased candidate must be counted in determining the  
28 results of the election for the office for which the decedent was a  
29 candidate.

30 4. If the deceased candidate on the ballot at the general election  
31 receives the majority of the votes cast for the office, the deceased  
32 candidate shall be deemed elected and the office to which he or she  
33 was elected shall be deemed vacant at the beginning of the term for  
34 which he or she was elected. The vacancy thus created must be  
35 filled in the same manner as if the candidate had died after taking  
36 office for that term.

37 **Sec. 6.** NRS 293C.186 is hereby amended to read as follows:

38 293C.186 1. After a person files a declaration of candidacy or  
39 an acceptance of candidacy to be a candidate for an office, ~~and not~~  
40 ~~later than 5 working days after the last day the person may withdraw~~  
41 ~~his or her candidacy pursuant to NRS 293C.195,~~ an elector may file  
42 with the city clerk a written challenge of the person on the grounds  
43 that the person fails to meet any qualification required for the office  
44 pursuant to the constitution or a statute of this State, including,  
45 without limitation, a requirement concerning age or residency.



1 Before accepting the challenge from the elector, the filing officer  
2 shall notify the elector that if the challenge is found by a court to be  
3 frivolous, the elector may be required to pay the reasonable  
4 attorney's fees and court costs of the challenged person.

5 2. A challenge filed pursuant to subsection 1 must:

6 (a) Indicate each qualification the person fails to meet;

7 (b) Have attached all documentation and evidence supporting  
8 the challenge; and

9 (c) Be in the form of an affidavit, signed by the elector under  
10 penalty of perjury.

11 3. Upon receipt of a challenge pursuant to subsection 1, the  
12 city clerk shall immediately transmit the challenge to the city  
13 attorney.

14 4. If the city attorney determines that probable cause exists to  
15 support the challenge, the city attorney shall, not later than 5 days  
16 after receiving the challenge, petition a court of competent  
17 jurisdiction to order the person to appear before the court. Upon  
18 receipt of such a petition, the court shall enter an order directing the  
19 person to appear before the court at a hearing, at a time and place to  
20 be fixed by the court in the order, to show cause why the challenge  
21 is not valid. A certified copy of the order must be served upon the  
22 person. The court shall give priority to such proceedings over all  
23 other matters pending with the court, except for criminal  
24 proceedings.

25 5. If, at the hearing, the court determines by a preponderance of  
26 the evidence that the challenge is valid or that the person otherwise  
27 fails to meet any qualification required for the office pursuant to the  
28 constitution or a statute of this State, or if the person fails to appear  
29 at the hearing:

30 (a) The name of the person must not appear on any ballot for the  
31 election for the office for which the person filed the declaration of  
32 candidacy or acceptance of candidacy; ~~and~~

33 (b) The person is disqualified from entering upon the duties of  
34 the office for which he or she filed the declaration of candidacy or  
35 acceptance of candidacy ~~H~~;

36 *(c) The court shall order that the challenged person pay the*  
37 *attorney's fees and court costs of the elector who filed the*  
38 *challenge; and*

39 *(d) The court shall order the person to pay to the State of*  
40 *Nevada a civil penalty of not less than \$5,000. Any civil penalty*  
41 *collected pursuant to this paragraph must be deposited by the city*  
42 *attorney for credit to the State General Fund in the bank*  
43 *designated by the State Treasurer.*

44 6. If, at the hearing, the court determines that the challenge is  
45 frivolous, the court may order the elector who filed the challenge to



1 pay the reasonable attorney's fees and court costs of the challenged  
2 person.

3 **Sec. 7.** NRS 293C.1865 is hereby amended to read as follows:

4 293C.1865 1. In addition to any other penalty provided by  
5 law, if a person willfully files a declaration of candidacy or  
6 acceptance of candidacy knowing that the declaration of candidacy  
7 or acceptance of candidacy contains a false statement:

8 (a) Except as otherwise provided in NRS 293.165 or 293.166,  
9 the name of the person must not appear on any ballot for the election  
10 for which the person filed the declaration of candidacy or  
11 acceptance of candidacy; and

12 (b) The person is disqualified from entering upon the duties of  
13 the office for which he or she was a candidate.

14 2. If the name of a person who is disqualified from entering  
15 upon the duties of an office pursuant to subsection 1 appears on a  
16 ballot for the election is disqualified because the deadline set forth  
17 in NRS 293.165 and 293.166 for making changes to the ballot has  
18 passed, the Secretary of State and city clerk must ~~post~~:

19 (a) *Post* a sign at each polling place where the person's name  
20 will appear on the ballot informing voters that the person is  
21 disqualified from entering upon the duties of office ~~H~~; and

22 (b) *Notify voters in any other manner required by a court*  
23 *order that the person is disqualified from entering upon the duties*  
24 *of office.*

25 **Sec. 8.** This act becomes effective:

26 1. Upon passage and approval for the purpose of adopting any  
27 regulations and performing any other preparatory administrative  
28 tasks necessary to carry out the provisions of this act; and

29 2. On January 1, 2016, for all other purposes.

