

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; providing certain remedies and penalties in preelection challenges to the qualifications of a candidate; changing the deadline for an elector to file certain preelection challenges to the qualifications of a candidate; making conforming changes to the definition of “actual residence” for purposes of candidacy; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, if a candidate is disqualified from taking office because the candidate fails to meet any qualification required for the office, the Secretary of State and local election officials must post a sign at each polling place where the candidate’s name will appear on the ballot informing voters that the candidate is disqualified from taking office. (NRS 293.184, 293C.1865) Additionally, under existing law, there are several different types of preelection court actions that may be brought to challenge a candidate on grounds that the candidate fails to meet any qualification required for the office, including actions for a declaratory judgment or a writ of mandamus. (NRS 281.050, 293.182, 293C.186; *DeStefano v. Berkus*, 121 Nev. 627, 628-31 (2005); *Child v. Lomax*, 124 Nev. 600, 604-05 (2008))

Section 2.5 of this bill provides that in any preelection action where the court finds that a candidate fails to meet any qualification required for the office: (1) the candidate is disqualified from taking office; (2) the court may order the candidate to pay the attorney’s fees and costs of the party who brought the action, including the Attorney General or a district attorney or city attorney; (3) in addition to any other notice required by law, the court may direct the Secretary of State and local election officials to notify voters in any other manner the court deems appropriate that the person is disqualified from taking office; and (4) if the Attorney General or a district attorney or city attorney brought the action, the court shall order the person to pay to the State of Nevada a civil penalty of not less than \$5,000.



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Existing law authorizes an elector to file a written challenge to a candidate's qualifications not later than 5 working days after the last day for the candidate to formally withdraw his or her candidacy. Depending on the state or local office being sought by the candidate, the Attorney General or the appropriate district attorney or city attorney must review the challenge and, if he or she determines that probable cause exists to support the challenge, must bring a preelection court action challenging the candidate's qualifications within a statutorily-prescribed period. (NRS 293.182, 293C.186; *Williams v. Clark County Dist. Att'y*, 118 Nev. 473, 477-79 (2002) (interpreting NRS 293.182 to permit an elector to file a written challenge not later than 5 working days after the last day for the candidate to formally withdraw his or her candidacy)) **Sections 3 and 6** of this bill change the deadline for an elector to file such a written challenge to the last Monday immediately preceding the first day of early voting for any general election.

Existing law defines the term "actual residence" to mean the place where a candidate is legally domiciled and maintains a permanent habitation, and when a candidate maintains more than one place of permanent habitation, the place designated by the candidate as his or her principal permanent habitation is deemed to be the candidate's actual residence. (NRS 281.050) The Nevada Supreme Court has held that the place designated by the candidate as his or her principal permanent habitation must be the place where the candidate actually resides and is legally domiciled in order for the candidate to be eligible to the office. (*Williams v. Clark County Dist. Att'y*, 118 Nev. 473, 484-86 (2002); *Chachas v. Miller*, 120 Nev. 51, 53-56 (2004)) **Section 8** of this bill amends existing law to reflect the Supreme Court's holding.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 2.5. Chapter 293 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In addition to any other remedy or penalty provided by law, if a court of competent jurisdiction finds in any preelection action that a person who is a candidate for any office fails to meet any qualification required for the office pursuant to the Constitution or laws of this State:

(a) The person is disqualified from entering upon the duties of the office for which he or she filed a declaration of candidacy or acceptance of candidacy;

(b) The court may order the person to pay the reasonable attorney's fees and costs of the party who brought the action, including, without limitation, the Attorney General or a district attorney or city attorney;

(c) In addition to any other notice required by law, the court may direct the Secretary of State and county clerk or city clerk, as applicable, to notify voters in any other manner the court deems appropriate that the person is disqualified from entering upon the duties of the office; and



(d) If the Attorney General or a district attorney or city attorney brought the action, the court shall order the person to pay to the State of Nevada a civil penalty of not less than \$5,000. Any civil penalty collected pursuant to this paragraph must be deposited by the Attorney General or district attorney or city attorney, as applicable, for credit to the State General Fund in the financial institution designated by the State Treasurer.

2. The provisions of this section apply to any preelection action brought to challenge a person who is a candidate for any office on the grounds that the person fails to meet any qualification required for the office pursuant to the Constitution or laws of this State, including, without limitation, any action brought pursuant to NRS 281.050, 293.182 or 293C.186 or any action brought for:

(a) Declaratory or injunctive relief pursuant to chapter 30 or 33 of NRS;

(b) Writ relief pursuant to chapter 34 of NRS; or

(c) Any other legal or equitable relief.

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}~~ **p.m. on** the last ~~{day the person may withdraw his or her candidacy}~~ **Monday immediately preceding the first day of the period of early voting by personal appearance for the general election** pursuant to NRS ~~{293.202,}~~ 293.3568, 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}~~ **laws** 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.}~~ **person who is being challenged.**

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

5. If, at the hearing, the court determines by a preponderance of the evidence that the challenge is valid or that the person otherwise fails to meet any qualification required for the office pursuant to the Constitution or ~~{a statute}~~ **laws** of this State, or if the person fails to appear at the hearing:

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

(b) The person is ~~{disqualified from entering upon the duties of the office for which he or she filed the declaration of candidacy or acceptance of candidacy.}~~ **subject to the provisions of section 2.5 of this act.**

6. If, at the hearing, the court determines that the challenge is frivolous, the court may order the elector who filed the challenge to pay the reasonable attorney's fees and ~~{court}~~ costs of the ~~{challenged person.}~~ **person who was challenged.**

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

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

293C.186 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 ~~{working days after}~~ **p.m. on** the last ~~{day the person may withdraw his or her candidacy}~~ **Monday immediately preceding the first day of the period of early voting by personal appearance for the general city election** pursuant to NRS ~~{293C.195.}~~ **293C.3568**, an elector may file with the city clerk 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}~~ **laws** 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.}~~ **person who is being challenged.**

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, the city clerk shall immediately transmit the challenge to the city attorney.

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

5. If, at the hearing, the court determines by a preponderance of the evidence that the challenge is valid or that the person otherwise fails to meet any qualification required for the office pursuant to the constitution or ~~{a statute}~~ **laws** of this State, or if the person fails to appear at the hearing:

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

(b) The person is ~~{disqualified from entering upon the duties of the office for which he or she filed the declaration of candidacy or acceptance of candidacy.}~~ **subject to the provisions of section 2.5 of this act.**

6. If, at the hearing, the court determines that the challenge is frivolous, the court may order the elector who filed the challenge to pay the reasonable attorney's fees and ~~{court}~~ costs of the ~~{challenged person.}~~ **person who was challenged.**

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 281.050 is hereby amended to read as follows:

281.050 1. The residence of a person with reference to **his or her** eligibility to **any** office is the person's actual residence within the State, ~~{or}~~ county, ~~{or}~~ district, **ward, subdistrict or any other unit prescribed by law**, as the case may be, during all the period for which residence is claimed by the person. If any person absents



1 himself or herself from the jurisdiction of that person's residence
2 with the intention in good faith to return without delay and continue
3 such residence, the period of absence must not be considered in
4 determining the question of residence.

5 2. If a person who has filed ~~{as a candidate}~~ *a declaration of*
6 *candidacy or acceptance of candidacy* for any elective office
7 moves the person's residence out of the State, county, district, ward,
8 subdistrict or any other unit prescribed by law ~~{for which the person~~
9 ~~is a candidate and}~~ , *as the case may be*, in which the person is
10 required actually, as opposed to constructively, to reside ~~{}~~ *in order*
11 *for the person to be eligible to the office*, a vacancy is created
12 thereby and the appropriate action for filling the vacancy must be
13 taken. A person shall be deemed to have moved the person's
14 residence for the purposes of this section if:

15 (a) The person has acted affirmatively to remove himself or
16 himself from one place; and

17 (b) The person has an intention to remain in another place.

18 3. The district court has jurisdiction to determine the question
19 of residence in an action for declaratory judgment.

20 4. *If, in any preelection action for declaratory judgment, the*
21 *district court finds that a person who has filed a declaration of*
22 *candidacy or acceptance of candidacy for any elective office fails*
23 *to meet any qualification concerning residence required for the*
24 *office pursuant to the Constitution or laws of this State, the person*
25 *is subject to the provisions of section 2.5 of this act.*

26 5. As used in this section ~~{, "actual"}~~ :

27 (a) *"Actual residence"* means the place *of permanent*
28 *habitation* where a person *actually resides and* is legally domiciled
29 ~~. {and maintains a permanent habitation.}~~ If the person maintains
30 more than one ~~{such}~~ *place of permanent* habitation, the place the
31 person declares to be the person's principal permanent habitation
32 when filing a declaration *of candidacy* or ~~{affidavit pursuant to NRS~~
33 ~~293.177 or 293C.185 shall be deemed to}~~ *acceptance of candidacy*
34 *for any elective office must* be the ~~{person's actual residence.}~~ *place*
35 *where the person actually resides and is legally domiciled in order*
36 *for the person to be eligible to the office.*

37 (b) *"Declaration of candidacy or acceptance of candidacy"*
38 *means a declaration of candidacy or acceptance of candidacy filed*
39 *pursuant to chapter 293 or 293C of NRS.*

40 **Sec. 9.** This act becomes effective:

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



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

