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FIRST REPRINT

A.B. 448

ASSEMBLY BILL NO. 448—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

MARCH 25, 2019

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions governing the procedure for filling certain vacancies in office. (BDR 17-950)

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 the Legislature; revising provisions governing the procedure to fill a vacancy in the office of a Legislator; setting forth certain residency requirements for a person appointed to fill a vacancy in the office of a Legislator; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a candidate seeking election to the office of a Legislator must actually, as opposed to constructively, reside in the legislative district for at least 30 days immediately preceding the deadline for the close of the filing period to become a candidate. (NRS 293.1755) Additionally, existing law requires the legislative candidate to be an actual, as opposed to constructive, citizen resident of this State for 1 year immediately preceding his or her election. (NRS 218A.200)

Existing law also requires the legislative candidate to file a declaration or acceptance of candidacy and a declaration of residency in which the legislative candidate swears or affirms under penalty of perjury that he or she meets the residency requirements and other qualifications for the legislative office. Finally, existing law provides that a legislative candidate who knowingly and willfully files a declaration or acceptance of candidacy or declaration of residency that contains a false statement is guilty of a gross misdemeanor. (NRS 293.177, 293.181)

This bill enacts similar provisions with regard to persons who file applications to fill a vacancy in a legislative office. Under the Nevada Constitution and existing statutes, if a vacancy occurs in the office of a Legislator during a regular or special session or when no election at which officers are to be elected will take place before the next regular or special session, the appropriate board or boards of county commissioners are required to fill the vacancy by appointment. (Nev. Const. Art. 4, § 12; NRS 218A.260) **Section 2** of this bill requires the appropriate board or boards of county commissioners charged with filling the vacancy to establish: (1) a process by which persons may file applications to fill the vacancy; and (2) a deadline for



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the close of filing of applications to fill the vacancy. **Section 3** of this bill requires persons filing such applications to also file declarations of eligibility in which they swear or affirm under penalty of perjury that they meet the residency requirements and other qualifications to fill the vacancy. **Section 3** further provides that any person who knowingly and willfully files a declaration of eligibility that contains a false statement is guilty of a gross misdemeanor.

Finally, the Nevada Constitution and existing statutes provide that when filling a vacancy in a legislative office, the appropriate board or boards of county commissioners must appoint a person who: (1) is a duly qualified elector in the legislative district; (2) has been an actual, as opposed to constructive, citizen resident of this State for 1 year next preceding the person's appointment; (3) has attained the age of 21 years at the time of the person's appointment; (4) is a member of the same political party as the former Legislator; and (5) actually, as opposed to constructively, resides in the legislative district. (Nev. Const. Art. 4, §§ 5, 12; NRS 218A.200, 218A.260) **Sections 4** and 5 of this bill clarify that the person appointed to fill the vacancy must meet all these qualifications for the legislative office and must also: (1) have timely filed an application and declaration of eligibility under **sections 2 and 3**; and (2) have actually, as opposed to constructively, resided in the legislative district for at least 30 days immediately preceding the deadline established under **section 2** for the close of filing of applications to fill the vacancy.

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

Section 1. Chapter 218A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *If a vacancy in the office of a Legislator must be filled pursuant to NRS 218A.260 and the former Legislator was elected or appointed from a district wholly within one county, the board of county commissioners of the county in which the district is located shall establish:*

(a) A process by which persons may file applications with the board to fill the vacancy; and

(b) A specific date for the close of filing of applications to fill the vacancy.

2. *If a vacancy in the office of a Legislator must be filled pursuant to NRS 218A.260 and the former Legislator was elected or appointed from a district comprising more than one county:*

(a) The board of county commissioners of each county within or partly within the district shall establish a process by which persons may file applications with that board to fill the vacancy.

(b) The board of county commissioners of the county with the largest population in the district shall, after considering any recommendations made by the other boards within a reasonable time after the vacancy, establish a specific date that is the same for all of the boards for the close of filing of applications to fill the vacancy.



Sec. 3. 1. If a person files an application with any board of county commissioners to fill a vacancy in the office of a Legislator pursuant to section 2 of this act, the person must execute and file with his or her application a declaration of eligibility that must be in substantially the following form:

For the purpose of applying to fill the vacancy in the office of a Legislator in the following legislative district, (name of assembly or senatorial district), I, the undersigned, do swear or affirm under penalty of perjury that I actually, as opposed to constructively, reside at, in the City or Town of, County of, State of Nevada; that, as required by NRS 218A.260, my actual, as opposed to constructive, residence in that legislative district began on a date at least 30 days immediately preceding the date established pursuant to section 2 of this act for the close of filing of applications to fill the vacancy; that my telephone number is, and the address at which I receive mail, if different than my residence, is; that I am registered as a member of the Party; that I am a qualified elector pursuant to Section 1 of Article 2 of the Constitution of the State of Nevada; that if I have ever been convicted of treason or a felony, my civil rights have been restored by a court of competent jurisdiction; that I will otherwise qualify for the office if appointed thereto, including, but not limited to, complying with any limitation prescribed by the Constitution of this State concerning the number of years or terms for which a person may hold the office; that I understand that knowingly and willfully filing a declaration of eligibility which contains a false statement is a crime punishable as a gross misdemeanor; and that, as required by NRS 218A.200, I will have been an actual, as opposed to constructive, citizen resident of this State for 1 year immediately preceding the date of my appointment and that, during such period, I will have resided at the following residence or residences:

.....
Street Address

.....
Street Address

.....
City or Town

.....
City or Town

.....
State

.....
State



1 *From..... To* *From To*
2 *Dates of Residency* *Dates of Residency*

3
4
5 *Street Address* *Street Address*

6
7 *City or Town* *City or Town*

8
9 *State* *State*

10
11 *From..... To* *From To*
12 *Dates of Residency* *Dates of Residency*

13 *(Attach additional sheet or sheets of residences as*
14 *necessary)*

15
16
17 *(Name of applicant)*

18
19
20 *(Signature of applicant)*

21
22 *Subscribed and sworn to before me*
23 *this day of the month of of the year*

24
25
26 *Notary Public or other person*
27 *authorized to administer an oath*

28
29 2. Each address of the applicant that must be included in the
30 declaration of eligibility pursuant to subsection 1 must be the
31 street address of the residence where the applicant actually, as
32 opposed to constructively, resided or resides in accordance with
33 NRS 281.050, if one has been assigned. The declaration of
34 eligibility must not be accepted for filing if any of the applicant's
35 addresses are listed as a post office box unless a street address has
36 not been assigned to the residence.

37 3. Any person who knowingly and willfully files a declaration
38 of eligibility that contains a false statement in violation of this
39 section is guilty of a gross misdemeanor.

40 **Sec. 4.** NRS 218A.200 is hereby amended to read as follows:
41 218A.200 A person is not eligible to be elected or appointed to
42 office as a Legislator unless the person:

43 1. Is a qualified elector;



2. Has been an actual, as opposed to constructive, citizen resident of this State for 1 year next preceding the person's election or appointment; ~~and~~

3. At the time of election or appointment, has attained the age of 21 years ~~and~~; *and*

4. *Meets all other qualifications for the office as required by the Constitution and laws of this State.*

Sec. 5. NRS 218A.260 is hereby amended to read as follows:

218A.260 1. If, *for any reason set forth in Section 12 of Article 4 of the Nevada Constitution or for any other reason*, a vacancy occurs in the office of a Legislator during a regular or special session or at a time when no biennial election or regular election at which county officers are to be elected will take place between the occurrence of the vacancy and the next regular or special session, the vacancy must be filled in the manner provided in this section.

2. If the former Legislator was elected or appointed from a district wholly within one county, the board of county commissioners of the county in which the district is located shall fill the vacancy by appointing a person *who meets the qualifications for the office as required by NRS 218A.200, who timely files an application to fill the vacancy pursuant to section 2 of this act and a declaration of eligibility pursuant to section 3 of this act*, who is a member of the same political party as the former Legislator and who *has, in accordance with NRS 281.050*, actually, as opposed to constructively, ~~resides~~ *resided* in the district ~~for at least 30 days immediately preceding the date established pursuant to subsection 1 of section 2 of this act for the close of filing of applications to fill the vacancy.~~

3. If the former Legislator was elected or appointed from a district comprising more than one county, the *boards of* county commissioners of each county within or partly within the district shall fill the vacancy by appointing a person *who meets the qualifications for the office as required by NRS 218A.200, who timely files an application to fill the vacancy pursuant to section 2 of this act and a declaration of eligibility pursuant to section 3 of this act*, who is a member of the same political party as the former Legislator and who *has, in accordance with NRS 281.050*, actually, as opposed to constructively, ~~resides~~ *resided* in the district ~~for at least 30 days immediately preceding the date established pursuant to subsection 2 of section 2 of this act for the close of filing of applications to fill the vacancy.~~ To fill the vacancy:

(a) Each board of county commissioners shall first meet separately and determine the single candidate it will nominate to fill the vacancy.



(b) The boards shall then meet jointly. The joint meeting must be chaired by the person who is the chair of the board of county commissioners of the county with the largest population in the district. At the joint meeting:

(1) The chair of each board, on behalf of that board, shall cast a proportionate number of votes according to the percent, rounded to the nearest whole percent, which the population of that board's county is of the population of the entire district. Populations must be determined by the last decennial census or special census conducted by the Bureau of the Census of the United States Department of Commerce.

(2) The person who receives a plurality of these votes is appointed to fill the vacancy. If no person receives a plurality of the votes, the boards of county commissioners of the respective counties shall each select a candidate, and the appointee must be chosen by drawing lots among the candidates so selected.

4. The board of county commissioners or the board of the county with the largest population in the district shall issue a certificate of appointment naming the appointee. The county clerk or the clerk of the county with the largest population in the district shall give the certificate to the appointee and send a copy of the certificate to the Secretary of State.

Sec. 6. This act becomes effective upon passage and approval.

