

Amendment No. 463

Assembly Amendment to Assembly Bill No. 448	(BDR 17-950)
Proposed by: Assembly Committee on Legislative Operations and Elections	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	|	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SSH/KCP



Date: 4/18/2019

A.B. No. 448—Revises provisions governing the procedure for filling certain vacancies in office. (BDR 17-950)



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 ~~provides that~~ 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 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.

28 Finally, the Nevada Constitution and existing statutes provide that when filling a
 29 vacancy in a legislative office, the appropriate board or boards of county commissioners
 30 must appoint a person who : (1) is a duly qualified elector in the legislative district; (2) has
 31 been an actual, as opposed to constructive, citizen resident of this State for 1 year next
 32 preceding the person's appointment; (3) has attained the age of 21 years at the time of
 33 the person's appointment; (4) is a member of the same political party as the former
 34 Legislator ; and [who] (5) actually, as opposed to constructively, resides in the legislative
 35 district. (Nev. Const. Art. 4, §§ 5, 12; NRS 218A.200, 218A.260) [~~This bill requires~~
 36 Sections 4 and 5 of this bill clarify that the person appointed to fill [a] the vacancy must
 37 meet all these qualifications for the legislative office and must also: (1) have timely filed
 38 an application and declaration of eligibility under sections 2 and 3; and (2) have actually,
 39 as opposed to constructively, resided in the legislative district for at least 30 days immediately
 40 preceding the [date] deadline established [~~by the board of county commissioners~~] under
 41 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:

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

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

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

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

10 2. If a vacancy in the office of a Legislator must be filled pursuant to NRS
 11 218A.260 and the former Legislator was elected or appointed from a district
 12 comprising more than one county:

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

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

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

25
 26 For the purpose of applying to fill the vacancy in the office of a
 27 Legislator in the following legislative district, (name of
 28 assembly or senatorial district), I, the undersigned, do swear or
 29 affirm under penalty of perjury that I actually, as opposed to
 30 constructively, reside at in the City or Town of
 31 County of, State of Nevada; that, as required by NRS
 32 218A.260, my actual, as opposed to constructive, residence in that
 33 legislative district began on a date at least 30 days immediately preceding
 34 the date established pursuant to section 2 of this act for the close of filing
 35 of applications to fill the vacancy; that my telephone number is

1 and the address at which I receive mail, if different than my residence, is
 2; that I am registered as a member of the Party; that I
 3 am a qualified elector pursuant to Section 1 of Article 2 of the
 4 Constitution of the State of Nevada; that if I have ever been convicted of
 5 treason or a felony, my civil rights have been restored by a court of
 6 competent jurisdiction; that I will otherwise qualify for the office if
 7 appointed thereto, including, but not limited to, complying with any
 8 limitation prescribed by the Constitution of this State concerning the
 9 number of years or terms for which a person may hold the office; that I
 10 understand that knowingly and willfully filing a declaration of eligibility
 11 which contains a false statement is a crime punishable as a gross
 12 misdemeanor; and that, as required by NRS 218A.200, I will have been
 13 an actual, as opposed to constructive, citizen resident of this State for 1
 14 year immediately preceding the date of my appointment and that, during
 15 such period, I will have resided at the following residence or residences:

16
 17

18 <u>Street Address</u>	.....	<u>Street Address</u>	.....
19 .....	.....	.....	.....
20 <u>City or Town</u>	.....	<u>City or Town</u>	.....
21 .....	.....	.....	.....
22 <u>State</u>	.....	<u>State</u>	.....

23
 24 From..... To..... From..... To.....
 25 Dates of Residency Dates of Residency

26
 27

28 <u>Street Address</u>	.....	<u>Street Address</u>	.....
29 .....	.....	.....	.....
30 <u>City or Town</u>	.....	<u>City or Town</u>	.....
31 .....	.....	.....	.....
32 <u>State</u>	.....	<u>State</u>	.....

33
 34 From..... To..... From..... To.....
 35 Dates of Residency Dates of Residency
 36 (Attach additional sheet or sheets of residences as necessary)

37
 38

39 (Name of applicant)

40

41

42 (Signature of applicant)

43
 44 Subscribed and sworn to before me
 45 this day of the month of of the year

46
 47

48 Notary Public or other person
 49 authorized to administer an oath

50
 51 2. Each address of the applicant that must be included in the declaration of
 52 eligibility pursuant to subsection 1 must be the street address of the residence
 53 where the applicant actually, as opposed to constructively, resided or resides in

1 accordance with NRS 281.050, if one has been assigned. The declaration of
 2 eligibility must not be accepted for filing if any of the applicant's addresses are
 3 listed as a post office box unless a street address has not been assigned to the
 4 residence.

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

8 ~~[Section 1.]~~ Sec. 4. NRS 218A.200 is hereby amended to read as
 9 follows:

10 218A.200 A person is not eligible to be elected or appointed to office as a
 11 Legislator unless the person:

- 12 1. Is a qualified elector;
- 13 2. Has been an actual, as opposed to constructive, citizen resident of this State
 14 for 1 year next preceding the person's election or appointment; ~~and~~
- 15 3. At the time of election or appointment, has attained the age of 21 years ~~;~~;

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

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

20 218A.260 1. If for any reason set forth in Section 12 of Article 4 of the
 21 Nevada Constitution or for any other reason, a vacancy occurs in the office of a
 22 Legislator during a regular or special session or at a time when no biennial election
 23 or regular election at which county officers are to be elected will take place
 24 between the occurrence of the vacancy and the next regular or special session, the
 25 vacancy must be filled in the manner provided in this section.

26 2. If the former Legislator was elected or appointed from a district wholly
 27 within one county, the board of county commissioners of the county in which the
 28 district is located shall fill the vacancy by appointing a person who meets the
 29 qualifications for the office as required by NRS 218A.200, who timely files an
 30 application to fill the vacancy pursuant to section 2 of this act and a declaration
 31 of eligibility pursuant to section 3 of this act, who is a member of the same
 32 political party as the former Legislator and who has, in accordance with NRS
 33 281.050, actually, as opposed to constructively, ~~resides~~ resided in the district ~~;~~
 34 for at least 30 days immediately preceding the date established ~~[by the board of~~
 35 ~~county commissioners]~~ pursuant to subsection 1 of section 2 of this act for the
 36 close of filing of applications ~~[by persons applying]~~ to fill the vacancy.

37 3. If the former Legislator was elected or appointed from a district comprising
 38 more than one county, the boards of county commissioners of each county within
 39 or partly within the district shall fill the vacancy by appointing a person who meets
 40 the qualifications for the office as required by NRS 218A.200, who timely files an
 41 application to fill the vacancy pursuant to section 2 of this act and a declaration
 42 of eligibility pursuant to section 3 of this act, who is a member of the same
 43 political party as the former Legislator and who has, in accordance with NRS
 44 281.050, actually, as opposed to constructively, ~~resides~~ resided in the district ~~;~~
 45 for at least 30 days immediately preceding the date established ~~[by the board of~~
 46 ~~county commissioners]~~ pursuant to subsection 2 of section 2 of this act for the
 47 close of filing of applications ~~[by persons applying]~~ to fill the vacancy. To fill the
 48 vacancy:

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

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

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

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

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

16 ~~[Sec. 2.]~~ **Sec. 6.** This act becomes effective upon passage and approval.