

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Eightieth Session  
June 2, 2019**

The Committee on Legislative Operations and Elections was called to order by Chair Sandra Jauregui at 6:16 p.m. on Sunday, June 2, 2019, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Sandra Jauregui, Chair  
Assemblyman Ozzie Fumo, Vice Chair  
Assemblyman Skip Daly  
Assemblyman John Hambrick  
Assemblyman Glen Leavitt  
Assemblyman William McCurdy II  
Assemblywoman Brittney Miller  
Assemblywoman Daniele Monroe-Moreno  
Assemblyman Tom Roberts  
Assemblywoman Selena Torres

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator James Ohrenschall, Senate District No. 21

**STAFF MEMBERS PRESENT:**

Carol Stonefield, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Catherine Bodenstein, Committee Secretary  
Melissa Loomis, Committee Assistant



**OTHERS PRESENT:**

Wayne Thorley, Deputy of Elections, Office of the Secretary of State

**Chair Jauregui:**

[Roll was called.] Welcome, everyone, to the Assembly Committee on Legislative Operations and Elections. I will remind everyone that it is day 119 and you know the rules. Silence everything that makes noise and be nice to each other. Those are the words of Chairman Yeager. Our bill sponsor is on his way. We are going to stand in recess [at 6:17 p.m.].

Committee, we will come back to order [at 6:21 p.m.]. Welcome, Senator Ohrenschall. We have two items on our agenda today. I would like to remind everyone—because we are pressed for time—when we are opening the hearing to testimony to keep your remarks to the contents of the measure being presented, and we will be limiting testimony to two minutes per testifier. With that, I would like to open the hearing on Senate Bill 123 (2nd Reprint).

**Senate Bill 123 (2nd Reprint): Revises provisions relating to elections. (BDR 24-726)**

**Senator James Ohrenschall, Senate District No. 21:**

It is always good to be home in this Committee. I had the pleasure of serving on this Committee for six regular sessions. I made some great friends, worked on some great policy, and I think the world of this Committee. Now that I have buttered you up, hopefully you will not ask me any technical questions on this very complex bill, but I am very proud to present Senate Bill 123 (2nd Reprint). It has changed quite a bit from the original bill that was introduced by the Senate Committee on Legislative Operations and Elections. It dealt with a lot of other election issues and went through some major amendments over in the Senate Committee on Finance. I believe now it is still a very, very positive and important bill dealing with some other election issues.

I would like to briefly highlight the various provisions of the bill. In summary, Senate Bill 123 (2nd Reprint) provides for greater election security, makes technical changes regarding electronic rosters used at the polling places, helps private property owners who provide those polling locations, and removes antiquated language from the *Nevada Revised Statutes* (NRS).

First, I would like to bring your attention to sections 8 and 9 of the bill. These provisions would require the Secretary of State to adopt regulations for conducting what is called a "risk-limiting audit" after an election. A risk-limiting audit is an audit of an election that provides strong statistical evidence that the election outcome is right. Specifically, in section 8, subsection 2, a risk-limiting audit "means an audit protocol that: (a) Makes use of statistical principles and methods; and (b) Is designed to limit the risk of certifying an incorrect election outcome."

In October 2018, the Division of Internal Audits, Office of Finance, Office of the Governor, recommended in an audit report [Report No. 19-01] that the Office of the Secretary of State explore the possibility of implementing risk-limiting audits in Nevada. The provisions in the bill allow the Secretary of State to comply with that recommendation for risk-limiting audits in the Division of Internal Audits' audit report.

Madam Chair, one of the reasons I went to law school was that I was not very strong in statistics or mathematics. I did take a statistics course at the University of Nevada, Las Vegas and somehow managed to pass it. I am happy to try to explain what a risk-limiting audit is, but I think that there may be some others who would do a better job at that. It does look at the accuracy and precision, especially in very close races.

As a bit of background, postelection audits done prior to the certification of election results are essential to administering a secure election. Audits against the paper vote record allow election officials to verify equipment malfunctions or vote tampering. Nevada currently uses fixed percentage, nonstatistical, postelection audits in order to ensure that voting machines accurately record all votes cast. As reported in that audit report, a fixed percentage, nonstatistical audit methodology may not effectively ensure voting machines accurately record all votes cast. The implementation of risk-limiting audits, which was recommended by that audit report, will ensure postelection audit results are statistically supported and will allow for a more effective audit methodology.

So when would these risk-limiting audits commence? Section 86, at the end of the bill, first requires the development of a pilot program for conducting a risk-limiting audit of the results of the 2020 General Election. The Secretary of State may require each county to participate. Then, beginning with the 2022 election cycle, under the bill the risk-limiting audits will become a regular practice for the Secretary of State and the counties.

Sections 34 and 43 of S.B. 123 (R2) require city and county election officials to test all electronic pollbooks prior to each election to ensure that the pollbook is functional in accordance with regulations adopted by the Secretary of State. While current state law requires extensive certification and testing of voting systems and the components of those voting systems, testing of electronic pollbooks is not required in our statutes. Beginning with the 2018 Primary Election, all counties in Nevada are now using electronic pollbooks, both for early voting and for Election Day voting. Electronic pollbooks allow poll workers to check in voters and perform other critical administrative functions at the polling place. They also allow for "vote center" style of voting. For those of us from Clark County, that is what we had last election where anyone from any part of the county could vote at any vote center on Election Day. They would not have to vote at their preassigned polling place in their neighborhood the way it was in the prior elections. If a pollbook is not functioning properly, it can impact a voter's ability to participate in that election. That is why these testing provisions are so important.

Sections 6 and 7 of the bill provide mandatory cybersecurity awareness training for local election officials, enhanced information privacy surrounding documents relating to election security, and mandatory reporting of cybersecurity incidents to the Secretary of State's Office. A conforming change related to this is found in section 67.

Moving on to other technical portions of the bill, sections 22 and 26 address the filed list of judicial and nonjudicial candidates. Existing law establishes separate filing periods for judicial candidates and nonjudicial candidates and requires a candidate who wishes to withdraw to do so within seven days after the last day for filing. The Secretary of State is required to forward a certified list of candidates to each county not later than five working days after the last day a candidate may withdraw his or her candidacy, after which the county clerk must publish a notice of the primary or general election in a newspaper.

Section 22 of this bill clarifies that the Secretary of State must forward the list of candidates for judicial and nonjudicial offices not later than five working days after the last day a candidate for nonjudicial office may withdraw his or her candidacy. Then, each county clerk can publish a notice of the election based on the full slate of candidates. This is helpful because judicial candidates typically file for office in January and nonjudicial candidates typically file for office in March, leaving a gap where the required certified list cannot, technically, be published. A conforming change relating to the nonjudicial candidates is found in section 29.

The next technical changes can be found in sections 5, 33, 41, and 42. Specifically, existing federal law establishes the United States Election Assistance Commission and charges that agency with various duties, including the development of standards for voting systems. These sections of the bill revise references to the standards for voting systems established by the Federal Election Commission with the United States Election Assistance Commission.

Currently, Nevada law provides that if there has been a tie vote for any office of a county, township, incorporated city, or a city organized under a special charter and the charter is silent on the tie-vote issue or the district is located wholly within one county, the winner is determined by lot. I think some of us have heard about the drawing of the card to determine the winner of a tie vote. Section 35 of S.B. 123 (R2) adds new provisions about how nominees are selected when a tie vote occurs in a primary election for nonpartisan office. Section 32 of the bill makes a conforming change relating to this.

Moving on to section 37 of the measure, this section addresses an important issue that some of our county clerks and voter registrars have been dealing with as it relates to Election Day polling places that are located on private property. For those of us from Clark County, we are probably familiar with a lot of polling places that are in big shopping centers; the Election Department is working with the private property owner to be able to have a convenient location that is in the neighborhood and close to voters. Section 37 of the bill provides that private property owners would have the same protection already afforded them during the early voting period. Section 37 says that on Election Day, the legal rights and remedies of the owner or lessor of the private property to be used as a location used as

a polling place are not impaired or affected by renting the property. In 2018, several Election Day vote center sites expressed concern that they were unable to deny electioneering activities on Election Day and those property owners have indicated that they will no longer be willing to offer their properties in future elections if there is not a change.

Section 38 addresses the process by which to handle an incomplete voter registration application. Existing law provides that if a person does not indicate a political party affiliation or indicates that he or she is not affiliated with a political party on his or her voter registration application, the county clerk shall list his or her political party as nonpartisan. Section 38 of S.B. 123 (R2) provides that if a person who is already preregistered or registered to vote submits a new paper application in the same county in which he or she is already registered, and the person does not make any such indications on the new application, the county clerk shall not change the person's existing political party affiliation as established by his or her prior application.

Moving on to the next change in section 57, this section addresses the manner in which the Secretary of State takes in and tracks initiative and referendum petitions. Specifically, the measure requires the Secretary of State to assign to the petition a unique identifier number that must consist of a serial number or letter, or both, and distinguish among each different type of petition received. This same section also ensures that the initiative and referendum petitions received by the Secretary of State are posted on the Secretary of State's Internet website.

Section 59 makes a technical change to further specify that a notice of intent to recall a public officer is filed "with the filing officer with whom the public officer filed his or her declaration of candidacy."

Finally, throughout the bill you will notice dozens of very technical deletions of the term "acceptance of candidacy" and "certificate of candidacy." The measure makes changes throughout Title 24 of the NRS and in a few chapters outside of Title 24 to capture the repeal of the provisions in section 85 that created the term "acceptance of candidacy" and "certificate of candidacy." These terms are redundant to the term "declaration of candidacy," which is used throughout the NRS. You will find these changes have been made in sections 11 through 13, 15 through 21, 23, 27, 28, 30, 31, 36, 44 through 46, 48, 49, 51 through 56, 58, 60, 61 through 66, 68, 69, 71 through 83, and it is those technical changes that contribute to all the pages in this bill.

Madam Chair, I believe that S.B. 123 (R2) helps ensure the accuracy and security of our election systems. I know it is a long bill and it is late in the session. I am happy to answer any questions, but hopefully you will not have any, especially Assemblyman Daly.

**Chair Jauregui:**

Committee, do you have any questions for the bill's sponsor?

**Senator Ohrenschall:**

I am just kidding. Bring them on.

**Assemblyman Fumo:**

This bill is comprehensive and your presentation was just outstanding. It made it easy to follow. I have one question on section 8. I do not know if you can answer it or if the Secretary of State would have to come up herself. Have you worked with them on a plan? I see that section 8 authorizes them or mandates them to adopt regulations. Have they already started on that? Or have you worked with them on what we need to get started?

**Senator Ohrenschall:**

I do not want to speak for the Secretary of State. I believe that Deputy Thorley is here and will be coming up at some point, either now or later.

**Assemblyman Fumo:**

For as comprehensive as this bill was, your presentation was so easy to follow. That was the only question I had when I was looking through it.

**Assemblyman Daly:**

I have easy questions, I promise. I did get a chance to read through it over the last hour or so. On the tiebreak, does that only apply to a nonpartisan race?

**Senator Ohrenschall:**

That is how I understand the tiebreak section. That is correct.

**Assemblyman Daly:**

I do not care if it goes through on that, but why do we not want to break that second-place tie?

**Senator Ohrenschall:**

As I understand how the tiebreak would work in a nonpartisan primary if there were a tie—let us say there was an office of university regent and John Smith, Mary Jones, and Fred Smith are the candidates. John Smith and Mary Jones each get 500 votes, and Fred Smith gets 400 votes. John Smith and Mary Jones would both go on to the general election. They would go on to the runoff.

**Assemblyman Daly:**

If there is a tie for first place and there were four candidates or three candidates and the first two tie, I understand sending both of them on to the general election. But if there is one person who gets the most and then second place ties, you send all three to the general election. I do not understand why they do not break that second-place tie and get it down to two people. Obviously, that would not work in a partisan race. You would have to get it down to one to go against the other. You could not have two candidates from one party go against one candidate from the other. I wanted to be clear that it just applied to the nonpartisan race. We do not need to carry on anymore. I just thought it was odd.

I do have another question, and it might be for committee counsel. I think it is in section 38, subsection 7. It says the provisions of subsection 6, which says that a clerk will not change the registration if a person left it blank and the individual was previously registered. It says it does not apply to the National Mail Voter Registration Application. What makes that type of registration different from any other? What would the clerk do in that case if somebody left that blank? Would they not be registered?

**Senator Ohrenschall:**

I think that might be a question that I need to pass on to the Office of the Secretary of State when Mr. Thorley comes up to speak.

**Kevin Powers, Committee Counsel:**

I can address Assemblyman Daly's previous question on the tie as well. With regard to a tie in the second place of a nonpartisan primary, the way the statute would be structured is that when you have at least three or more candidates in the primary and you have one candidate receiving the most votes and the other two candidates—we will say there are only three—are tied, then you have to determine who goes to the primary. Obviously, you have to take the two people who are tied because no one decided that contest between them. However, there is a separate statute that provides if the person who had the most votes in the primary got a majority of the votes in the primary, he or she would be declared elected. This only comes into the situation where the first-place person gets the most votes, but not a majority of the votes, and then the second- and third-place persons would be tied. You cannot resolve that tie and they all three go to the general election. It could happen in the situation where you have three or more candidates as well; it is just candidates four, five, or six who would not go anywhere. That covers that situation.

Turning next to the National Mail Voter Registration Application, that is going to be governed by federal law. The state cannot prescribe what happens when the county clerk receives the application under the National Mail Voter Registration. Keep in mind, this situation only occurs because the person is already registered and then submits another application for whatever reason and he or she fails to indicate his or her political party. Under those circumstances, this statute kicks in and says if he or she failed to indicate his or her political party in the second application, you do not change what happened in the first application. As far as if the federal application comes in, you have to follow what the federal requirements are, but I can leave that to the Secretary of State's Office to tell us how that proceeds with regard to the federal requirements.

**Assemblyman Roberts:**

It was more in the default language in section 38, subsection 6, paragraph (b), and about the current default system. Currently, if someone does not list anything, they forget to check a party, it defaults to nonpartisan. Is that what we are trying to fix?

**Senator Ohrenschall:**

As I understand the current state of the law, if I had been a registered Democrat and then filled out a new paper application and for some reason I forgot to check the affiliation, the assumption is that I intended to be a nonpartisan, whether I had been a Democrat or Republican. This change would apply to someone who had been registered to vote in that same county or had filled out the preregistration application. It would assume that not making the choice defaults to your prior registration, what you had filled out in that preregistration application versus a desire to be a nonpartisan.

**Chair Jauregui:**

In section 6, at least once a year, each county or city clerk and all members of their staff would be required to take cybersecurity training. I was trying to look through the minutes so I would get ahead and maybe not have to ask these questions, but do we know where the clerks were? Did they come in neutral on this area? I know that they had some concerns with taking on extra work while they were trying to get ready for same-day registration, automatic voter registration, and polling centers. I wanted to see where their concerns are. I do not see anyone here to present for the clerks with such a last-minute hearing.

**Senator Ohrenschall:**

This has come pretty late in the session in terms of the hearing we had in the Senate Committee on Finance. No clerks have reached out to me as of yet with concerns about this. Unfortunately, we are getting very late in the session, but as of now, no clerks have reached out to me. There was no testimony in opposition at the hearing in Senate Committee on Finance.

**Chair Jauregui:**

Did this have a policy hearing in the Senate Committee on Legislative Operations and Elections?

**Senator Ohrenschall:**

The bill had a policy hearing, but these amendments came in the Senate Committee on Finance. It was a very different bill in the Senate Committee on Legislative Operations and Elections.

**Chair Jauregui:**

I want to come back to the section that Assemblyman Daly had questions on, section 35, subsection 1, paragraph (d). On the primary elections for the nonpartisan races, instead of having the tie, or the first and then the two go to the general election after the primary elections, why did we not move them into the general election?

**Senator Ohrenschall:**

Certainly, that is a policy choice that can be changed in either house. I suppose there could be arguments for and against either one. It is where the language is at, but there is still time. I see a very cross look from committee counsel, but there is still time for amendments.



**Kevin Powers:**

Madam Chair, for the record, the committee counsel never has a cross look. He has a plain, expressionless look every time he is in Committee.

**Senator Ohrenschall:**

There might not be time for amendments—I am not actually sure about that, but I will not foreclose that opportunity.

**Chair Jauregui:**

My last question was going to come in the repeal section, section 84. Is that section just repealing the appointment process? Could you walk me through that really quickly?

**Senator Ohrenschall:**

That section, I believe, tries to create conformity with Assembly Bill 50 that has been working its way through session. That was the bill that dealt with trying to move certain municipal elections that are still in the odd-numbered year to the even-numbered year. As I understand section 84, that tries to create conformity with Assembly Bill 50, which is working its way through the process. Actually, it may be over at the Governor's Office at this point. I would have to check. I know that we voted on it over in the Senate. I am just not sure where it is at right now. Thank you, Madam Chair.

**Chair Jauregui:**

Committee, do you have any other questions? Seeing no further questions, we will open it up to testimony in support.

**Wayne Thorley, Deputy of Elections, Office of the Secretary of State:**

I would like to thank Senator Ohrenschall for bringing this bill forward and presenting it. The Secretary of State's Office is in strong support of this bill. I would be happy to answer any of the questions that are still outstanding, if you would like, Madam Chair.

**Assemblyman Fumo:**

I was wondering if you have plans set up with them already, or if you had worked this out with the Senator. I can see by your headshake that there is still work needing to be done.

**Wayne Thorley:**

Regarding the regulations that will be adopted that will guide our process when we conduct a risk-limiting audit, those have yet to be developed. We have discussed internally about how this might take place, but we are certainly waiting for final approval on this bill before we get going in earnest on that.

**Chair Jauregui:**

Committee, do you have any questions for Mr. Thorley? Seeing none, is there anyone else who wishes to testify in support? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in neutral? Seeing no one, Senator Ohrenschall, did you want to give any closing remarks?

**Senator Ohrenschall:**

Senate Bill 123 (2nd Reprint), while a very technical bill, is a bill which will be not only positive policy, but also good to ensure the security of our elections. You read in the papers about data breaches and hackers and threats to all sorts of different systems in this digital age, and I think that having more tests to make sure that the computers are accurate and that they are subject to as much review as they can be will help ensure confidence in what is so key to our democracy. I hope the Committee will consider moving forward with this bill, and I appreciate your time. It has been great getting to be in this Committee's sister committee over in the Senate. Thank you for sending us so many great bills, and I appreciate the great attention you gave to the bills that we sent you.

**Chair Jauregui:**

With that, I will close the hearing on Senate Bill 123 (2nd Reprint). Committee, we are going to stand in recess for a minute. I believe, Senator Ohrenschall, the Senate might be going back into floor so we might have to recess [at 6:47 p.m.].

Committee, we are coming back to order [at 6:49 p.m.]. Thank you so much for your patience, everyone. For those of you who are here for Senate Joint Resolution 8, I have just been informed that the Senate is going back to floor and so we will stand in recess [at 6:49 p.m.].

**Senate Joint Resolution 8: Proposes to amend the Nevada Constitution to guarantee equal rights. (BDR C-1278**

[Senate Joint Resolution 8 was on the agenda but not heard.]

[The meeting was adjourned at 9:16 p.m.].

RESPECTFULLY SUBMITTED:

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Catherine Bodenstein  
Committee Secretary

APPROVED BY:

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Assemblywoman Sandra Jauregui, Chair

DATE: \_\_\_\_\_

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.