

# MEMO



*Connecting People to Policy*

DATE: March 10, 2022  
TO: Senator Ira Hansen  
FROM: Nicolas Anthony, Research Director, Research Division  
Haley Proehl, Senior Policy Analyst / GIS Specialist, Research Division  
SUBJECT: **Washoe County Election Resolution Research**

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You have asked this office to review and comment on any relevant state law or regulatory considerations that may be applicable to the 20 points contained in the draft Washoe County Resolution (dated February 22, 2022) authorizing measures related to the accuracy and security of elections (copy attached). For purposes of organization, each item is addressed below in the order in which it appears in the Resolution.

The Washoe County Registrar of Voters is responsible for administering elections but must comply with state law and regulations adopted by the secretary of state (SOS). This document is compiled by the Research Division of the Legislative Counsel Bureau (LCB) and is not intended to provide any type of legal advice. Should you wish to seek a legal opinion, our office would be pleased to forward your questions to the Legal Division of the LCB.

## **WASHOE COUNTY RESOLUTION**

### **1. Immediately correct the current voter registration list in verification with the USCIS SAVE program, National Change of Address (NCOA), and Washoe County Assessor and Vital records**

This is already addressed in state law. *Nevada Revised Statutes* ([NRS 293.530](#)) authorizes county clerks to use any reliable and reasonable means available to correct the portions of the statewide voter registration list that are relevant to the county clerks and to determine whether a registered voter's current residence is other than that indicated on the voter's application to register to vote.

However, there could be other state and federal laws governing requirements for maintaining the accuracy of the statewide voter registration list and procedures to follow when potential inaccuracies in voter registration lists are found. A full analysis of the issue would require legal research.

### **2. Ensure the strict use of Washoe County residents as poll workers**

[Nevada Revised Statutes 293.217](#) requires poll workers to be registered voters and not a candidate or relative of a candidate for nomination or election. Counties have imposed additional requirements to be hired as a poll worker, such as having access to reliable transportation and the ability to physically endure the long hours of Election Day. Washoe County could theoretically impose further requirements and require poll workers to be residents of the County.

Additionally, Section 12 of [Assembly Bill 321](#) (2021) places similar restrictions on election board officers for the mail ballot central counting board.

### **3. Providing equitable and fair opportunities for observation**

[Nevada Administrative Code \(NAC\) 293.245](#) regulates the observation of conduct of voting at a polling place. Observers are subject to certain restrictions as set forth in the regulation such as remaining in the designated area for observers (determined by the chair of the election board), wearing a name tag, and refraining from talking to voters or using a mobile telephone or computer within the polling place. The County could adopt additional measures regulating observation as long as they are in compliance with state regulations.

[Nevada Revised Statutes 293B.353](#) requires the county clerk to allow observation of counting ballots at the central counting place and Section 1 of [LCB File R107-21](#), recently adopted by the SOS and approved by the Legislative Commission, set forth requirements/restrictions similar to [NAC 293.245](#) for observing the counting at the central counting place. [Nevada Administrative Code 293.245](#) was recently amended by [LCB File R098-21](#).

### **4. Limiting private contributions per contributor to the Registrar's Office to \$2,500 per year**

We are not aware of anything statutorily that would prohibit Washoe County from imposing such a limitation; however, we are not providing legal advice as to any potential constitutional issues.

### **5. Enacting any other measure that ensures the accuracy, security, and purity of elections**

Washoe County could enact such measures as long as they are in compliance with federal and state law and regulations.

### **6. Quarterly reporting by the Registrar of Voters of all measures, and improvements thereto, used to ensure accuracy, reporting, and purity of elections**

Washoe County could enact an ordinance requiring quarterly reporting, as the board of county commissioners in each county having a population of 100,000 or more, may prescribe the duties of the office of the registrar of voters. [NRS 244.164](#)

### **7. Utilizing stealth paper ballots as primary method of voting, with provision of one electronic voting kiosk for ADA qualified voters**

State law specifies that voting must occur by printed ballot or by any other system approved by the SOS or authorized by law. [NRS 293.270](#). The Office of the SOS has approved [several mechanical voting systems for use in Nevada](#).

[Nevada Administrative Code 293.220](#) requires the county clerk or registrar of voters to prepare "a quantity of mechanical voting devices which assures an efficient flow of voters" for each precinct at least two days before an election.

[Nevada Revised Statutes 293.2955](#) sets forth various requirements for accessibility of polling places, ballots, and election materials.

Further, the Voters' Bill of Rights provides that each voter has the right to equal access to the elections system without discrimination. [Nev. Const. art. 2, § 1A](#); [NRS 293.2546](#)

### **8. Ensure mail ballots are sent certified receipt so only intended voter takes possession of it**

This would require a state law change.

### **9. Ensure ballot envelopes are scanned as "received" at intake stations connected in real time to voter database before being deposited into ballot boxes**

This would require a state law change.

- 10. Ensure bipartisan teams, who are not married, are utilized throughout election processes, including but not limited to verification of registration applications, intake stations/ballot boxes, ballot pickup teams, sorting sealed envelopes into precincts, delivering sealed envelopes to precinct tables, opening envelopes, verifying signatures, counting ballots, tallying results, etc.**

[Nevada Revised Statutes 293.217](#) already provides that election board officers for any polling place must not all be of the same political party. Additionally, there are various other provisions of NRS and NAC that require persons involved in the election process to be of different political parties. See Sections 12 and 17 of [AB 321](#); [NRS 293B.335](#); Section 6 of [LCB File 093-21](#); and Sections 2 and 3 of [LCB File 096-21](#).

It should also be noted that voter registration eligibility is done pursuant to state law.

- 11. Ensure bipartisan teams are approved by respective Central Committees of primary parties**

This would require a state law change.

- 12. Ensure bipartisan teams are scheduled in two shifts (one morning/day, one afternoon/swing) for all positions**

Counties have discretion over poll worker schedules, and such a policy could be adopted by Washoe County.

- 13. Ensure there is a Nevada National Guard presence at each polling/ballot box location, as well as the central counting center**

This could not be implemented by the Washoe County Board of County Commissioners alone, as the governor has the authority to deploy the Nevada National Guard. [Nev. Const. art. 5, § 5](#); [Nev. Const. art. 12, § 2](#)

[Nevada Revised Statutes 293.217](#) authorizes the registrar of voters to request that the sheriff appoint a deputy sheriff for each polling place in the county to preserve order during hours of voting and attend closing of the polls.

- 14. Ensure the counting procedure is public and continues without adjournment until completed**

This is already provided for by state law. [NRS 293.363](#)

- 15. Ensure ballots are counted by hand in order to be counted by hand in a recount**

County clerks and registrars of voters have discretion over how ballots are counted. [Nevada Revised Statutes 293.404](#) provides that all ballots must be recounted in the same manner in which the ballots were originally counted. If the ballots were originally counted by hand, they would need to be recounted by hand. [Nevada Revised Statutes 293.404](#) provides that the SOS may adopt regulations to carry out the provisions of the section, but there have been no regulations adopted concerning how ballots shall be counted.

However, if one county were to count ballots differently than another county, it may be in violation of the Voters' Bill of Rights, which provides that every voter has the right to have a uniform, statewide standard for counting and recounting all votes accurately. [Nev. Const. art. 2, § 1A](#); [NRS 293.2546](#)

**16. Ensure same day registrations are issued a paper provisional ballot of a different color than precinct paper ballots**

The Washoe County Registrar of Voters has discretion over the color of ballots. [Nevada Revised Statutes 293.250](#) provides that a county clerk shall prescribe the color or colors of the ballots and voting receipts used in any election which the clerk is required to conduct.

**17. Ensure all voter registration forms are verified against the USCIS SAVE program, National Change of Address (NCOA), and Washoe County Assessor and Vital records BEFORE they are entered into the voter registration system**

Various state and federal laws set forth requirements for maintaining the accuracy of the statewide voter registration list.

**18. Ensure registrations in voter registration system expire 5 years after registration/renewal**

Washoe County cannot enact an ordinance to "expire" all voter registrations after 5 years. Voter registration may only be cancelled pursuant to relevant federal and state law.

**19. Ensure renewal notifications are mailed in January to "active" electors whose registrations expire that year**

Active voter registrations do not expire and, thus, would not be renewed. Voter registration may only be cancelled pursuant to relevant federal and state law. The county may only send the notices required by the relevant statutory provisions governing cancellations of voter registrations.

**20. Ensure forensic material of elections is maintained for a period of 10 years.**

Our office is uncertain as to the definition of "forensic material of elections."

[Nevada Revised Statutes 293.391](#) requires certain elections materials be preserved for at least 22 months and requires the materials be destroyed immediately after the preservation period. However, since the time period for preservation is a minimum of 22 months, and there does not appear to be any relevant regulation governing the retention, it is likely that Washoe County could require the preservation of such materials for 10 years.

## **CONCLUDING REMARKS**

I trust this memorandum is responsive to your request. If you have any questions, please feel free to contact either of us at (775) 684-6825 or by email at NAnthony@lcb.state.nv.us or Haley.Proehl@lcb.state.nv.us.

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