

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R081-21

December 20, 2021

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1, 2 and 13, NRS 293.124; §§ 3-8, NRS 293.124, 293.247 and 293.250, as amended by section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951); § 9, NRS 293.124, 293.247 and 293.469, as amended by section 10 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1876; § 10, NRS 293.124 and 293.247; §§ 11 and 12, NRS 293D.200.

A REGULATION relating to elections; setting forth various requirements related to an elector with a disability or a registered voter with a disability using the system of approved electronic transmission established for certain uniformed military and overseas voters; requiring each county or city clerk to provide notice to certain persons regarding such a system of approved electronic transmission; revising the instructions provided to covered voters related to military-overseas ballots; revising the declaration that certain covered voters are required to submit with a military-overseas ballot; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Secretary of State to establish a system of approved electronic transmission through which certain uniformed military and overseas voters may register to vote, apply for a military-overseas ballot and cast a military-overseas ballot. (NRS 293D.200) Existing law also requires the Secretary of State to allow the system of approved electronic transmission to be used by: (1) an elector with a disability to register to vote; and (2) a registered voter with a disability to apply for and cast a ballot. Existing law further requires the Secretary of State to: (1) prescribe the form and content of a declaration for use by an elector or registered voter with a disability to swear or affirm specific representations; (2) prescribe procedures to be used by local elections officials in accepting, handling and counting ballots received from a registered voter with a disability using the system of approved electronic submission; and (3) adopt any regulation necessary to carry out these provisions. (Section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870) (NRS 293.269951)

Section 3 of this regulation provides that a person is an elector or registered voter with a disability if the elector or registered voter: (1) has a physical or mental impairment that substantially limits one or more of the major life activities of the elector or registered voter; (2) has a record of such impairment; or (3) is regarded as having such an impairment.

Section 4 of this regulation requires a registered voter with a disability who applies for a ballot using the system of approved electronic transmission to indicate whether: (1) the local elections official must send the ballot to the registered voter by mail or approved electronic transmission; and (2) the registered voter will return the ballot to the local elections official by mail or approved electronic transmission. **Section 4** further requires the local elections official to provide to the registered voter certain instructions depending on whether the registered voter will return the ballot by mail or approved electronic transmission.

Section 5 of this regulation sets forth the form of the declaration to which a registered voter with a disability must swear or affirm.

Section 6 of this regulation provides that if a local elections official receives a request for a ballot from a registered voter with a disability after a mail ballot has been sent to the registered voter, the local elections official must indicate that the mail ballot is cancelled in the mail ballot record.

Section 7 of this regulation requires a local elections official to: (1) cause a unique identification number to be included on a ballot sent to a registered voter with a disability; and (2) record in the ballot record certain information related to a ballot sent to a registered voter with a disability.

Section 8 of this regulation requires, not later than 60 days after the election, a local elections official to report to the Secretary of State certain information related to ballots sent to voters with disabilities.

Section 2 of this regulation defines the term “local elections official.”

Existing law provides that each county clerk is encouraged to notify the public, through means designated to reach members of the public who are elderly or disabled, of certain election information, including that an elector with a disability may register to vote and a registered voter who is disabled may request and cast a ballot using the system of approved electronic transmission established for certain uniformed military and overseas voters. (NRS 293.469, as amended by section 10 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1876) Existing regulations require the county or city clerk to provide notice of the availability of voting aids and procedures for voting by absentee ballot. (NAC 293.190, 293C.230) **Sections 9 and 10** of this regulation provide that the county or city clerk must provide notice of the procedures for registering to vote and voting using the system of approved electronic transmission established for certain uniformed military and overseas voters.

Existing regulations require that a local elections official provide instructions to a covered voter for marking and returning a military-overseas ballot, including an explanation that the military-overseas ballot and any other necessary voting materials must be received by the office of the appropriate local elections official by 7 p.m. Pacific Standard Time on the day of the election. (NAC 293D.010) **Section 11** of this regulation provides instead that the instructions include an explanation of the deadline for a covered voter to cast and return the military-overseas ballot and other necessary voting materials.

Section 12 of this regulation revises the form of the declaration of a covered voter to eliminate obsolete language.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 8, inclusive, of this regulation, “local elections official” has the meaning ascribed to it in NRS 293D.040.*

Sec. 3. *For the purposes of section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951), an elector with a disability may use the system of approved electronic transmission established pursuant to NRS 293D.200 to register to vote, and a registered voter with a disability may use the system of approved electronic transmission established pursuant to NRS 293D.200 to apply for and cast a ballot, if the elector or registered voter, as applicable:*

- 1. Has a physical or mental impairment that substantially limits one or more of the major life activities of the elector or registered voter;*
- 2. Has a record of such an impairment; or*
- 3. Is regarded as having such an impairment.*

Sec. 4. *1. A registered voter with a disability who applies for a ballot pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951) must indicate on the application:*

(a) Whether the local elections official must send the ballot to the registered voter by mail or approved electronic transmission; and

(b) Whether the registered voter will return the ballot to the local elections official by mail or approved electronic transmission.

2. If a registered voter with a disability indicates on the application for a ballot that he or she will return the ballot by mail, the local elections official must provide to the registered voter a ballot and instructions for marking and returning the ballot, including, without limitation:

- (a) How to indicate the candidate or candidates for whom the voter is voting;*
- (b) How to correct the ballot if the voter commits an error marking the ballot or wants to change the candidate or candidates for whom the voter is voting;*
- (c) An explanation that the completed ballot must be inserted into the accompanying privacy sleeve or envelope;*
- (d) An explanation that the registered voter must insert the privacy envelope or sleeve into the declaration envelope;*
- (e) An explanation that the registered voter must complete and sign the declaration on the front of the declaration envelope; and*
- (f) An explanation of the deadline for the registered voter to cast and return the ballot and other necessary voting materials, including, without limitation, the declaration set forth in section 5 of this regulation, by mail to the appropriate local elections official.*

3. If a registered voter with a disability indicates on the application for a ballot that he or she will return the ballot by approved electronic transmission, the local elections official must provide to the registered voter a ballot and instructions for marking and returning the ballot, including, without limitation:

- (a) How to indicate the candidate or candidates for whom the registered voter is voting.*
- (b) An explanation that the declaration set forth in section 5 of this regulation must be signed by the registered voter and returned by approved electronic transmission with the ballot.*
- (c) An explanation of how to return the ballot by approved electronic transmission.*
- (d) An explanation of the deadline for the registered voter to cast and return the ballot and other necessary voting materials, including, without limitation, the declaration set forth in*

section 5 of this regulation, by approved electronic transmission to the appropriate local elections official.

4. In addition to any applicable requirements set forth in subsections 2 and 3, the local elections official must:

(a) Provide to the registered voter the contact information of the local elections official or an authorized representative of the local elections official who will be available during normal business hours to answer questions from the voter concerning the ballot. Such information must include, without limitation, the local elections official or authorized representative's name, address, phone number, facsimile transmission number and electronic mail address.

(b) Instruct the registered voter that the ballot may not be used by another registered voter or duplicated.

(c) Provide to the registered voter any other information required by the Secretary of State or local elections official.

Sec. 5. 1. The declaration that is required pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951) for use by a registered voter with a disability who indicates that he or she will return the military-overseas ballot by approved electronic transmission must be in the following form:

DECLARATION OF REGISTERED VOTER WITH A DISABILITY

I am a registered voter with a disability.

I am a citizen of the United States.

I will be at least 18 years of age on election day.

I have not been adjudicated mentally incompetent, or if so, my right to vote has been restored.

I am not registered to vote in any other jurisdiction in the United States.

I have not applied, nor do I intend to apply, for a ballot from any other jurisdiction for the same election.

The information on this form is true and complete to the best of my knowledge.

I acknowledge that if I return my voted ballot by approved electronic transmission, I have waived my right to have my ballot kept secret. Nevertheless, I understand that my signature will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

I understand that a material misstatement of fact in completing this document may be grounds for a conviction of perjury under the laws of the United States or this State.

I declare under penalty of perjury under the laws of the United States and this State that the foregoing is true and correct.

(Signed)

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***YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE
DECLARATION AND INCLUDE IT WITH YOUR BALLOT.***

2. The declaration that is required pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951), for use by a registered voter

with a disability who indicates that he or she will return the ballot by mail must be in the following form:

DECLARATION OF REGISTERED VOTER WITH A DISABILITY

I am a registered voter with a disability.

I am a citizen of the United States.

I will be at least 18 years of age on election day.

I have not been adjudicated mentally incompetent, or if so, my right to vote has been restored.

I am not registered to vote in any other jurisdiction in the United States.

I have not applied, nor do I intend to apply, for a ballot from any other jurisdiction for the same election.

The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in completing this document may be grounds for a conviction of perjury under the laws of the United States or this State.

I declare under penalty of perjury under the laws of the United States and this State that the foregoing is true and correct.

(Signed)

.....

***YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE
DECLARATION AND INCLUDE IT WITH YOUR BALLOT.***

Sec. 6. If a local elections official receives a request for a ballot from a registered voter with a disability pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951) after a mail ballot has been sent to the registered voter pursuant to sections 3 to 15, inclusive, and 17 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1216-23 (NRS 293.269911 to 293.269937), inclusive, or sections 51 to 65, inclusive, of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1243-50 (NRS 293C.263 to 293C.26337, inclusive), the local elections official must indicate that the mail ballot is cancelled in the mail ballot record.

Sec. 7. If a local elections official sends a ballot to a registered voter with a disability pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951), the local elections official must:

1. Cause a unique identification number to be included on the ballot.

2. Record in the ballot record:

(a) The name of the voter, the voter's precinct or district, the voter's political affiliation, if any, and the unique identification number of the ballot.

(b) The method used by the local elections official to send the ballot to the registered voter. If approved electronic transmission is used by the local elections official to send the ballot, the local elections official must record in the ballot record the destination of the ballot, such as the facsimile transmission number or electronic mailing address, as applicable, to which the local elections official sent the ballot.

(c) The date and time that the local elections official sent the ballot to the voter.

(d) The initials of the person who sent the ballot to the voter.

3. Maintain the original ballot card in a secured area where access is allowed only with the approval of the local elections official.

Sec. 8. *Not later than 60 days after the date of an election, each local elections official shall report to the Secretary of State, in the form prescribed by the Secretary of State:*

1. The number of ballots for that election that the local elections official sent to registered voters with disabilities pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951);

2. The number of ballots for that election that were returned by registered voters with disabilities pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951); and

3. The number of ballots described in subsection 2 which were counted by the local elections official.

Sec. 9. NAC 293.190 is hereby amended to read as follows:

293.190 1. Each county clerk shall provide to persons with disabilities and persons 65 years of age or older registration aids and voting aids, including:

(a) Instructions which are printed in large type and are conspicuously displayed at each permanent registration facility and at each polling place; and

(b) Information through telecommunication devices for persons who are deaf.

2. When the county clerk provides public notice of registration and voting, he or she shall also provide notice of the availability of registration aids ~~+~~ *and* voting aids , ~~and~~ procedures for voting by ~~absentee~~ *mail* ballot ~~+~~ *and procedures for registering to vote and voting*

pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951).

Sec. 10. NAC 293C.230 is hereby amended to read as follows:

293C.230 1. Each city clerk shall provide to persons with disabilities and persons 65 years of age or older aids for voting, including:

(a) Instructions that are printed in large type and are conspicuously displayed at each polling place; and

(b) Information through telecommunication devices for persons who are deaf.

2. When the city clerk provides public notice of voting, he or she shall also provide notice of the availability of aids for voting , ~~and~~ procedures for voting by ~~absent~~ mail ballot ~~+~~ *and procedures for registering to vote and voting pursuant to section 1 of Assembly Bill No. 121, chapter 315, Statutes of Nevada 2021, at page 1870 (NRS 293.269951).*

Sec. 11. NAC 293D.010 is hereby amended to read as follows:

293D.010 1. A covered voter who applies for a military-overseas ballot shall indicate on the application:

(a) Whether the local elections official must send the military-overseas ballot to the covered voter by mail or approved electronic transmission; and

(b) Whether the covered voter will return the military-overseas ballot to the local elections official by mail or approved electronic transmission.

2. If a covered voter indicates on the application for a military-overseas ballot that he or she will return the military-overseas ballot by mail, the local elections official must provide to the covered voter a military-overseas ballot and instructions for marking and returning the military-overseas ballot, including, without limitation:

- (a) How to indicate the candidate or candidates for whom the covered voter is voting.
- (b) How to correct the ballot if the covered voter commits an error in marking the ballot or wants to change the candidate or candidates for whom the covered voter is voting.
- (c) An explanation that the completed military-overseas ballot must be inserted into the accompanying privacy envelope or sleeve.
- (d) An explanation that the covered voter must insert the privacy envelope or sleeve into the declaration envelope.
- (e) An explanation that the covered voter must complete and sign the declaration on the front of the declaration envelope.
- (f) An explanation ~~{that}~~ *of the deadline for the registered voter to cast and return* the military-overseas ballot and any other necessary voting materials, including, without limitation, the declaration set forth in NAC 293D.020, ~~{must be received by the office of}~~ *to* the appropriate local elections official . ~~{by 7 p.m. Pacific Standard Time on the day of the election.}~~

3. If a covered voter indicates on the application for a military-overseas ballot that he or she will return the military-overseas ballot by approved electronic transmission, the local elections official must provide to the covered voter a military-overseas ballot and instructions for marking and returning the military-overseas ballot, including, without limitation:

- (a) How to indicate the candidate or candidates for whom the covered voter is voting.
- (b) An explanation that the declaration set forth in NAC 293D.020 must be signed by the covered voter and returned by approved electronic transmission with the military-overseas ballot.
- (c) An explanation of how to return the military-overseas ballot by approved electronic transmission.

(d) An explanation ~~{that}~~ *of the deadline for the registered voter to cast and return* the military-overseas ballot and any other necessary voting materials, including, without limitation, the declaration set forth in NAC 293D.020, ~~{must be received by the office of}~~ *to* the appropriate local elections official. ~~{by 7 p.m. Pacific Standard Time on the day of the election.}~~

Sec. 12. NAC 293D.020 is hereby amended to read as follows:

293D.020 1. The declaration that is required pursuant to subsection 4 of NRS 293D.200, for use by a covered voter who indicates that he or she will return the military-overseas ballot by approved electronic transmission must be in the following form:

DECLARATION OF COVERED VOTER

I am a uniformed-service voter, a spouse or dependent of a uniformed-service voter, or an overseas voter pursuant to the provisions of chapter 293D of NRS.

I am a citizen of the United States.

I will be at least 18 years of age on election day.

I have not been adjudicated mentally incompetent, or if so, my right to vote has been restored.

I have not been convicted of treason or a felony, or if so, my right to vote has been restored.

I am not registered to vote in any other jurisdiction in the United States.

I have not applied, nor do I intend to apply, for a ballot from any other jurisdiction for the same election.

The information on this form is true and complete to the best of my knowledge.

I acknowledge that if I return my voted ballot by approved electronic transmission, I have waived my right to have my ballot kept secret. Nevertheless, I understand that ~~I, as with any absent voter,~~ my signature will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

I understand that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State.

I declare under penalty of perjury under the laws of the United States and this State that the foregoing is true and correct.

(Signed)

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YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE
DECLARATION AND INCLUDE IT WITH YOUR BALLOT.

2. The declaration that is required pursuant to subsection 4 of NRS 293D.200, for use by a covered voter who indicates that he or she will return the military-overseas ballot by mail must be in the following form:

DECLARATION OF COVERED VOTER

I am a uniformed-service voter, a spouse or dependent of a uniformed-service voter, or an overseas voter pursuant to the provisions of chapter 293D of NRS.

I am a citizen of the United States.

I will be at least 18 years of age on election day.

I have not been adjudicated mentally incompetent, or if so, my right to vote has been restored.

I have not been convicted of treason or a felony, or if so, my right to vote has been restored.

I am not registered to vote in any other jurisdiction in the United States.

I have not applied, nor do I intend to apply, for a ballot from any other jurisdiction for the same election.

The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State.

I declare under penalty of perjury under the laws of the United States and this State that the foregoing is true and correct.

(Signed)

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YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE
DECLARATION AND INCLUDE IT WITH YOUR BALLOT.

Sec. 13. This regulation becomes effective upon the later of:

1. January 1, 2022; or
2. The date on which this regulation is filed with the Secretary of State.