

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R090-21

December 20, 2021

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

AUTHORITY: §§ 1, 10 and 15, NRS 293.124; § 2, NRS 293.124, 293.247 and 293.250; § 3, NRS 293.124 and 293.247 and section 11 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1220 (NRS 293.269927); §§ 4-8, 12 and 13, NRS 293.124 and 293.247; § 9, NRS 293.124, 293.247 and 293.3606 and section 15 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1223 (NRS 293.269935); § 11, NRS 293.124 and 293.247 and section 59 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1247 (NRS 293C.26327); § 14, NRS 293.124 and 293.247 and section 63 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1250 (NRS 293C.26335).

A REGULATION relating to elections; establishing certain requirements and procedures for mail ballots; eliminating certain obsolete references to “absent ballots;” and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the county and city clerks to send to each active registered voter and each person who registers to vote or updates his or her voter registration not later than 14 days before an election a mail ballot for all elections. (Sections 3 and 51 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1216 and 1243 (NRS 293.269911 and 293C.263)) Assembly Bill No. 321 of the 2021 Legislative Session repealed the provisions of Nevada Revised Statutes relating to absent ballots. (Section 91 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1266)

Existing regulations: (1) require each county clerk or city clerk to provide, with each absent ballot, certain instructions for correcting a mistake on the absent ballot; and (2) prohibit a county or city clerk from duplicating an absent ballot unless there is no ambiguity as to the intent of the voter. (NAC 293.307) **Section 2** of this regulation set forth similar requirements for mail ballots.

Existing regulations establish certain procedures for processing an absent ballot, including: (1) requiring the county or city clerk to record the receipt of the absent ballot and check the signature on the return envelope; and (2) the placement of any rejected absent ballots in a separate envelope and the notation of the reason for the rejection. (NAC 293.317, 293C.198) **Sections 3 and 11** of this regulation: (1) set forth similar requirements for mail ballots; and (2)

require the county clerk and city clerk to keep accurate records of the chain of custody for all mail ballots.

Existing regulations establish certain requirements for an absent mail ballot central counting board, including requiring the board to sort and count absent ballots by precinct. Existing regulations further require, with certain exceptions, the county clerk or city clerk to allow members of the public to observe the handling of absent ballots. (NAC 293.311, 293C.195) **Sections 4 and 12** of this regulation establish similar provisions for mail ballots.

Existing regulations require each county clerk and city clerk to submit a plan to the Secretary of State setting forth the procedures that the clerk will use for the disposition of absent ballots in case of emergency. (NAC 293.318) **Section 5** of this regulation establishes similar requirements for mail ballots.

Section 6 of this regulation defines the term “mail ballot.” **Sections 7-9, 13 and 14** of this regulation eliminate obsolete references to the term “absent ballot” in various provisions that will instead apply to mail ballots.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *Each county clerk or city clerk shall provide, with each mail ballot, instructions that must include the following:*

If you make a mistake or change your mind while voting this ballot, do not use correction fluid or tape. Simply cross out the name of the candidate you do not wish to vote for and fill in the oval of the candidate you do wish to vote for. See example below. Call (XXX) XXX-XXXX for assistance if needed.

George Washington — 
Benjamin Franklin 

2. *A county clerk or city clerk shall not duplicate any mail ballot which the voter has marked to indicate a correction or on which the voter has used correction tape or fluid unless the clerk determines that no ambiguity exists as to the intent of the voter.*

Sec. 3. 1. *When a mail ballot is returned to the county clerk, the county clerk shall record the receipt of the mail ballot in the mail ballot record and check the signature on the*

return envelope in accordance with the requirements of section 11 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1220 (NRS 293.269927).

2. The county clerk shall place any rejected mail ballot in a separate envelope and note on the outside of the envelope the appropriate number of the precinct and the reason for the rejection of the mail ballot.

3. Each county clerk shall keep records of the chain of custody for all mail ballots, including, without limitation, the mailing of mail ballots, reissued mail ballots, rejected mail ballots, verified mail ballots, duplicated mail ballots and tabulated mail ballots.

Sec. 4. 1. The county clerk shall, not earlier than 15 days before the day of the election, deliver the mail ballots to the mail ballot central counting board for counting. When the mail ballots are received, the mail ballot central counting board shall, in addition to the requirements of sections 13, 14 and 15 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1222 and 1223 (NRS 293.269931, 293.269933 and 293.269935):

(a) Sort the mail ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district, unless the system for counting the mail ballots produces an accounting of the mail ballots by precinct or voting district;

(b) Count the number of mail ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district;

(c) Account for all mail ballots on the record of mail ballots; and

(d) Place all the mail ballots and the record of mail ballots into the container provided by the county clerk.

2. Not later than 2 days before the date of delivery of the mail ballots to the mail central counting board for counting, the county clerk must post a statement in his or her office that

notifies the public that the mail central counting board will begin performing the actions set forth in subsection 1.

3. Any mail ballots received by the county clerk after he or she delivers the mail ballots pursuant to subsection 1, and until the deadline for the receipt of mail ballots pursuant to section 8 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1219 (NRS 293.269921), must be delivered to the mail ballot central counting board for counting.

4. The county clerk shall allow members of the general public to observe the handling of the mail ballots conducted pursuant to subsection 1 if those members do not interfere with the handling of the mail ballots.

Sec. 5. 1. *Each county clerk and city clerk shall submit a plan to the Secretary of State setting forth the procedures that the clerk will use for the disposition of mail ballots in case of an emergency. The plan must be submitted not later than 90 days before each election.*

2. In the case of an emergency, the Secretary of State may order one or more polling places to be used to accommodate voters who are unable to vote at their polling places due to the emergency.

Sec. 6. NAC 293.010 is hereby amended to read as follows:

293.010 As used in this chapter, unless the context otherwise requires:

1. “Ballot stock” means the material upon which:

(a) A ballot is printed; and

(b) A voter directly indicates his or her vote.

2. “Department” means the Department of Motor Vehicles.

3. *“Mail ballot” has the meaning ascribed to it in section 2 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1216 (NRS 293.0653).*

4. “Results cartridge” means the cartridge of a mechanical recording device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

~~4.~~ 5. “Signature stamp” has the meaning ascribed to it in NRS 427A.755.

~~5.~~ 6. “Statewide voter registration list” has the meaning ascribed to it in NRS 293.111.

~~6.~~ 7. “Voter verifiable paper audit trail printer” or “VVPAT” means the device attached to a mechanical recording device and the paper it prints to record all votes cast by a voter for any and all candidates and for or against any and all measures, enabling that voter to visually verify that the mechanical voting system has accurately recorded the votes of the voter.

~~7.~~ 8. “Voting booth” means any place or compartment used to screen a voter from the observation of others.

Sec. 7. 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, voting aids and procedures for voting by ~~absentee~~ *mail* ballot.

Sec. 8. NAC 293.270 is hereby amended to read as follows:

293.270 1. A person who completes the written affirmation required by NRS 293.3082 must be provided with a provisional ballot, regardless of whether the person is at the wrong polling place or precinct.

2. If an election official becomes aware that a person appearing to vote is a registered voter who has appeared to vote in the wrong polling place, the election official must inform the person of the location of the correct polling place for the person. The election official must also inform the person that although a provisional ballot may be cast at the incorrect precinct, the provisional ballot will not be counted unless the requirements of subsection 3 are satisfied and the voter casts the provisional ballot at a polling place that is located in the congressional district in which the voter resides.

3. A county clerk shall count a provisional ballot if the county clerk determines that all the following requirements were satisfied by the date of the election for which the provisional ballot was cast:

- (a) The voter was properly registered in the county where the provisional ballot was cast;
- (b) The voter was a citizen of the United States;
- (c) The voter was 18 years of age or older;
- (d) The voter had continuously resided in the county where he or she registered to vote for at least 30 days;
- (e) The voter had continuously resided in the precinct for which he or she registered to vote for at least 10 days;
- (f) ~~The voter had not been convicted of a felony or, if the voter had been convicted of a felony, the civil rights of the voter had been lawfully restored;~~
- ~~(g)~~ The voter signed the required affirmation;

~~(h)~~ (g) If the provisional ballot was cast at a polling place, the voter did not cast any other ballot, including ~~an absent or mail-in~~ *a mail* ballot;

~~(i)~~ (h) If the voter did not show proof of residence and identity at the time he or she registered to vote, that the voter provided official identification establishing residence and identity by 5 p.m. on the Friday following election day;

~~(j)~~ (i) The voter cast the provisional ballot at a polling place that was authorized to accept a ballot for the congressional district in which the voter resides; and

~~(k)~~ (j) The provisional ballot cast listed the correct federal offices for the congressional district in which the voter resides.

4. The county clerk shall, not earlier than 5 p.m. on the Friday immediately following election day, post and submit to the Secretary of State the totals of provisional votes counted. The county clerk shall post and submit the updated results in the same manner and form as election day results.

Sec. 9. NAC 293.331 is hereby amended to read as follows:

293.331 1. If a precinct has fewer than 10 returns from early voting:

(a) The reporting of those returns separately from the regular votes of the precinct shall be deemed, for the purposes of NRS 293.3606, to violate the secrecy of those voters' ballots; and

(b) Those returns must be reported in combination with the regular votes of the precinct.

2. If a precinct has fewer than 10 returns of ~~absent~~ *mail* ballots:

(a) The reporting of those returns separately from the regular votes of the precinct shall be deemed, for the purposes of ~~NRS 293.385,~~ *section 15 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1223 (NRS 293.269935)*, to violate the secrecy of those voters' ballots; and

(b) Those returns must be reported in combination with the regular votes of the precinct.

Sec. 10. Chapter 293C of NAC is hereby amended by adding thereto the provisions set forth as sections 11 and 12 of this regulation.

Sec. 11. 1. *When a mail ballot is returned to the city clerk, the city clerk shall record the receipt of the mail ballot in the mail ballot record and check the signature on the return envelope in accordance with the requirements of section 59 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1247 (NRS 293C.26327).*

2. The city clerk shall place any rejected mail ballot in a separate envelope and note on the outside of the envelope the appropriate number of the precinct and the reason for the rejection of the mail ballot.

3. Each city clerk must keep records of the chain of custody for all mail ballots, including, without limitation, the mailing of mail ballots, reissued mail ballots, rejected mail ballots, verified mail ballots, duplicated mail ballots and tabulated mail ballots.

Sec. 12. 1. *The city clerk shall, not earlier than 15 days before the day of the election, deliver the mail ballots to the mail ballot central counting board. When the mail ballots are received, the mail ballot central counting board shall, in addition to the requirements of sections 61, 62 and 63 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1249 and 1250 (NRS 293C.26331, 293C.26333 and 293C.26335):*

(a) Sort the mail ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district, unless the system for counting the mail ballots produces an accounting of the mail ballots by precinct or voting district;

(b) Count the number of mail ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district;

(c) Account for all mail ballots on the record of mail ballots; and

(d) Place all the mail ballots and the record of mail ballots into the container provided by the city clerk to transport those items to a central counting place and seal the container.

2. Not later than 2 days before the date of delivery of the mail ballots pursuant to subsection 1, the city clerk must post a statement in his or her office that notifies the public of any actions that will be taken pursuant to subsection 1.

3. Any mail ballots received by the city clerk after he or she delivers the mail ballots pursuant to subsection 1, and until the deadline for the receipt of mail ballots pursuant to section 61 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1249 (NRS 293C.26331), must be delivered to the mail ballot central counting board for counting.

4. The city clerk shall allow members of the general public to observe the handling of the mail ballots conducted pursuant to subsection 1 if those members do not interfere with the handling of the mail ballots.

Sec. 13. 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.

Sec. 14. NAC 293C.240 is hereby amended to read as follows:

293C.240 1. If a precinct has fewer than 10 returns from early voting:

(a) The reporting of those returns separately from the regular votes of the precinct shall be deemed, for the purposes of NRS 293C.3606, to violate the secrecy of those voters' ballots; and

(b) Those returns must be reported in combination with the regular votes of the precinct.

2. If a precinct has fewer than 10 returns of ~~absent~~ *mail* ballots:

(a) The reporting of those returns separately from the regular votes of the precinct shall be deemed, for the purposes of ~~NRS 293C.385,~~ *section 63 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1250 (NRS 293C.26335)*, to violate the secrecy of those voters' ballots; and

(b) Those returns must be reported in combination with the regular votes of the precinct.

Sec. 15. This regulation becomes effective upon the later of:

1. January 1, 2022; or

2. The date upon which this regulation is filed with the Secretary of State.