

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R091-21

December 20, 2021

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

AUTHORITY: §§ 1-4, 6-8 and 10-12, NRS 293.124 and 293.247; § 5, NRS 293.124, 293.247 and 293B.1045; § 9, NRS 293.124, 293.247 and 293B.135.

A REGULATION relating to elections; requiring a county and city clerk to submit to the Secretary of State certain contingency plans related to elections; revising provisions relating to ballot stock; establishing certain security and records requirements for mechanical voting systems, mechanical voting devices and other voting equipment; revising certain requirements for a plan to ensure the security of ballots; revising certain security requirements for an election computer program; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Secretary of State to adopt regulations for the conduct of elections in this State, which must include regulations prescribing: (1) the procedures to be used to ensure the security of the ballots; (2) the procedures to be used to ensure the security and accuracy of computer programs and tapes used for elections; and (3) the procedures to be used for the testing, use and auditing of a mechanical voting system. (NRS 293.247)

Sections 1 and 10 of this regulation require each county clerk and city clerk to submit to the Secretary of State a written contingency plan for: (1) election operations in the event that election operations are significantly disrupted; and (2) the tabulation of ballots in the event that the county or city, as applicable, experiences a loss of central counting equipment or the use of the central counting place.

Existing regulations: (1) define the term “ballot stock” to mean the material upon which a ballot is printed and a voter directly indicates his or her vote; (2) provide that the Secretary of State will reimburse the counties for the cost of the basic stock for ballots; (3) require a city clerk to order ballot stock for an election within 2 days after the date set for the close of registration for the election. (NAC 293.010, 293.200, 293C.360) **Sections 2, 8 and 11** of this regulation of this regulation provide that the term “ballot stock” also includes the materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, privacy sleeve and voter instructions. **Section 3** of this regulation replaces the term “stock for ballots” with the term “ballot stock.”

Existing law requires a county or city that wants to change or improve a mechanical voting system or mechanical recording device to first obtain approval from the Secretary of

State. (NRS 293B.1045) **Section 5** of this regulation prohibits a county or city clerk from installing any software on a mechanical voting system unless the Secretary of State has approved or required the installation.

Sections 6 of this regulation requires each county clerk and city clerk to maintain a written documentary record for mechanical voting systems, mechanical voting devices and other voting equipment which includes records of transports of mechanical voting systems, mechanical voting devices and other voting equipment and chain-of-custody records for mechanical voting systems, mechanical voting devices and other voting equipment. **Section 6** also requires mechanical voting systems, mechanical voting devices and other voting equipment to have tamper-evident seals identified with serial numbers which must be recorded and verified in the records of the county and city clerks.

Section 7 of this regulation requires each county clerk and city clerk to keep mechanical voting systems, mechanical voting devices and other voting equipment in a secure and controlled facility when not in use and to maintain a record of any person who accesses the mechanical voting systems, mechanical voting devices or other voting equipment. If there is any unauthorized access, **section 7** requires a county or city clerk to inform the Secretary of State in writing within 24 hours.

Existing regulations require that each county clerk, not later than the 90th day before the primary election, submit to the Secretary of State for approval a plan concerning the procedures to be used to ensure the security of the ballots, results cartridges and VVPATs. (NAC 293B.040) **Section 8** requires the plan to also include procedures to be used to ensure the security of election media cartridges or memory devices, blank ballot stock, chain-of-custody records and access controls. **Section 8** further requires the county and city clerks to ensure that election board officers who are allowed to handle ballots, results cartridges and VPPATs have sworn under oath to perform their duties honestly and faithfully.

Existing law requires a copy of each election computer program to be filed with the Secretary of State at least 1 week before an election. (NRS 293B.135) **Section 9** of this regulation requires that the copy be filed in certain electronic formats with password protection.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Each county clerk shall, not later than 60 days before the date of the general election, submit to the Secretary of State a written contingency plan that describes the procedures that will be used in the event that election operations, including, without limitation, mechanical voting systems and any components thereof, are significantly disrupted.

2. The plan required by subsection 1 must, without limitation:

(a) Consider all potential sources of disruption to election operations, including, without limitation:

(1) Systemic equipment failures or malfunctions;

(2) Power outages;

(3) Natural disasters or infrastructure failure;

(4) Threats of terrorism or other civil disturbances; and

(5) Unauthorized access, intrusion or hacking into election facilities or equipment; and

(b) Explain how the county clerk will ensure continuity in voting if one or more polling places become temporarily or permanently unusable during the period for early voting or on the day of the election, which may include, without limitation:

(1) Sending voters to an alternative polling place;

(2) Seeking a court order to extend voting hours; or

(3) Requesting that voters return to the polling place after the disruption has been resolved.

3. In addition to the written contingency plan required by subsection 1, each county clerk shall submit to the Secretary of State a written contingency plan for the tabulation of ballots in the event that the county experiences a loss of the central counting equipment or the use of the central counting place. If the county clerk invokes this contingency plan, the county clerk must notify the Secretary of State in writing not later than 12 hours after doing so. The plan:

(a) Must, without limitation, identify alternative counting equipment and facilities; and

(b) May provide for the transport of ballots across county lines for the purpose of ballot tabulation if the ballots are inventoried and can be safeguarded by election staff and election

board officers in the same manner as the ballots would be protected if the ballots were not transported.

4. Before each election, the county clerk shall:

(a) Review the existing contingency plans required by subsections 1 and 3 and update the plans as necessary; and

(b) Ensure that any election staff in the office of the county clerk and all other relevant county employees have been briefed on the contingency plans.

Sec. 2. 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~~ :

(a) The paper upon which ~~the~~

~~(a) A~~ *a* ballot is printed ~~the~~ ~~and~~

~~(b) A~~ *on which a* voter directly indicates his or her vote ~~the~~ ~~;~~ ~~and~~

(b) The materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, envelope or sleeve into which the mail ballot is inserted to ensure its secrecy and voter instructions.

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

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

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

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

Sec. 3. NAC 293.200 is hereby amended to read as follows:

293.200 1. The Secretary of State will reimburse the counties for the cost of the basic *ballot* stock. ~~{for ballots.}~~ Reimbursement will not be made for setup and other costs, including the cost of personalized printing, stitching, binding or numbering of the ballots.

2. Payment will be made after a claim of cost is presented to the Secretary of State. A county clerk shall present the claim:

(a) For the cost of the basic *ballot* stock ~~{for ballots}~~ for the primary election not later than June 30 of the year in which the general election is held.

(b) For the cost of the basic *ballot* stock for ballots for the general election not later than December 31 of the year in which the general election is held.

↪ A manufacturer’s invoice showing an itemized list of all charges must accompany the claim.

The Secretary of State will not pay claims presented more than 30 days after the date that the claim is required to be presented pursuant to paragraph (a) or (b).

Sec. 4. Chapter 293B of NAC is hereby amended by adding thereto the provisions set forth as sections 4, 5 and 6 of this regulation.

Sec. 5. A county clerk or city clerk shall not install any software on a mechanical voting system, or component thereof, unless the Secretary of State has approved or required the installation of the software.

Sec. 6. 1. For any mechanical voting system, mechanical voting device and other voting equipment in the custody of a county or city, including, without limitation, central counting equipment, precinct scanners, electronic rosters, direct recording equipment, voting machines and ballot marking devices, each county clerk and city clerk shall maintain in permanent ink a written documentary record of:

(a) Any transport of a mechanical voting system, mechanical voting device or other voting equipment between parties, including, without limitation, documentation of seals, chain-of-custody access logs and any other related information; and

(b) The uninterrupted chain of custody of each mechanical voting system and mechanical voting device and all other voting equipment in the custody of the county or city, which must span the entire time the mechanical voting system, mechanical voting device or voting equipment has been in the custody of the county or city, as applicable.

2. All records maintained pursuant to subsection 1 are subject to inspection by the Secretary of State.

3. All mechanical voting systems, mechanical voting devices and other voting equipment must have seals that are tamper-evident and identified by a serial number. The county or city clerk shall record the serial number of each seal on the records of chain of custody required by subsection 1 for any mechanical voting system, mechanical voting device or other voting equipment that is transported to or from a polling place. The entry of the serial number of the

seal in the records of chain of custody required by subsection 1 must be verified by two people who must:

(a) Confirm that the serial number in the records matches the serial number of the seal;

and

(b) Sign and date the entry in the records.

4. If a seal required by subsection 3 is changed or replaced, the records of chain of custody must include the reason for the replacement, the date of the replacement and the signatures of two persons who have verified that the serial number of the replacement matches the number entered in the record.

Sec. 7. 1. *Each county clerk and city clerk shall ensure that each mechanical voting system and mechanical voting device and all other voting equipment used by the county or city is secured in a facility with controlled access when not in use. A person shall not access the mechanical voting system, mechanical voting device or voting equipment unless he or she has been given specific written authorization from the county or city clerk. The county or city clerk shall notify the Secretary of State in writing within 24 hours if any person accesses a mechanical voting system, a mechanical voting device or any other voting equipment without such authorization.*

2. Each county and city clerk shall maintain a record of each person who accesses a mechanical voting system, a mechanical voting device or any other voting equipment pursuant to subsection 1. The record must include the name of the person, the signature of the person and the time and date of the access. If access is controlled using a key card or similar door access system, the system must produce records that meet the requirements of this subsection.

Sec. 8. NAC 293B.040 is hereby amended to read as follows:

293B.040 1. A county clerk *and city clerk* shall:

(a) Store ballots, results cartridges and VVPATs upon receipt in a vault or secure area that is accessible only by the county *or city* clerk and persons designated by the county *or city* clerk;

(b) Provide for the security and protection of the stored ballots, results cartridges and VVPATs;

(c) Control access to the stored ballots, results cartridges and VVPATs; ~~and~~

(d) Maintain a record of the persons allowed access to the stored ballots, results cartridges and VVPATs ~~;~~ *and*

(e) Require that any election board officers allowed access to the stored ballots, results cartridges and VVPATs have sworn under oath to perform their duties honestly and faithfully.

2. Except as otherwise provided in this subsection, each county *and city* clerk shall, not later than the 90th day before the ~~primary~~ *general* election, submit to the Secretary of State for approval *using the form prescribed by the Secretary of State* a plan to *ensure the accuracy and security of voting in the county or city, which must, without limitation:*

(a) Include procedures to carry out the provisions of paragraph ~~(1)~~ *(e)* of subsection 3 of NRS 293.247 concerning the procedures to be used to ensure the security of the ballots, results cartridges, ~~and~~ VVPATs ~~[- If there is no change to the plan submitted in the previous year, the county clerk is not required to submit another plan to the Secretary of State. The county clerk shall notify the Secretary of State, in writing, if there is no change to the plan. The plan must include, without limitation:];~~ *, election media cartridges or memory devices, blank ballot stock, chain-of-custody documents and access controls;*

(b) Include any forms, schedules logs or checklists that are referenced in the plan;

~~[(a) The]~~

(c) Identify the person who is responsible for transporting the ballots, results cartridges and VVPATs from the polling place to the central counting place; and

~~{(b) The}~~

(d) Include the time allotted for travel from the polling place to the central counting place.

3. If there is no change to the plan submitted pursuant to subsection 2 for the previous election, the county clerk or city clerk is not required to submit another plan to the Secretary of State. The county or city clerk must notify the Secretary of State, in writing, if there is no change to the plan.

4. The Secretary of State will approve or disapprove a plan submitted pursuant to subsection 2 not later than 15 days after the plan is submitted.

5. As used in this section, “ballot stock” means:

(a) The paper upon which a ballot is printed on which a voter directly indicates his or her vote; and

(b) The materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, envelope or sleeve into which the mail ballot is inserted to ensure its secrecy and voter instructions.

Sec. 9. NAC 293B.050 is hereby amended to read as follows:

293B.050 1. As used in NRS 293B.135, “election computer program” means the tape, source code, executable computer code or computer software and the tables created for an election to count correctly votes cast through the use of a mechanical voting system. The source code or executable computer code for an election must remain on file with the Secretary of State until amended.

2. An election computer program or tape must not be copied more than twice and printed out more than once for each election. The original program or tape must be sealed in the manner set forth in NRS 293B.155. A copy of the program or tape must be secured by the county clerk.

~~[Another]~~

3. *A copy of the election computer program must be ~~delivered~~ filed with the Secretary of State pursuant to NRS 293B.135. The copy filed with the Secretary of State may serve as a backup in the event that the original election computer program is destroyed or rendered unusable. The copy must be, without limitation:*

(a) Delivered by certified mail to the Secretary of State ~~to~~; and

(b) Provided by means of a compact disc, digital versatile disc, USB flash drive or thumb drive or a secure file transfer protocol site, which must be, without limitation, password protected.

~~[3.]~~ 4. The county clerk and Secretary of State shall provide for the security of an election computer program or tape in his or her possession.

Sec. 10. Chapter 293C of NAC is hereby amended by adding thereto a new section to read as follows:

1. *Each city clerk shall, not later than 60 days before the date of the general city election, submit to the Secretary of State a written contingency plan that describes the procedures that will be used in the event that election operations, including, without limitation, mechanical voting systems and any components thereof, are significantly disrupted.*

2. *The plan required by subsection 1 must, without limitation:*

(a) Consider all potential sources of disruption to election operations, including, without limitation:

(1) Systemic equipment failures or malfunctions;

(2) Power outages;

(3) Natural disasters or infrastructure failure;

(4) Threats of terrorism or other civil disturbances; and

(5) Unauthorized access, intrusion or hacking into election facilities or equipment; and

(b) Explain how the city clerk will ensure continuity in voting if one or more polling places become temporarily or permanently unusable during the period for early voting or on the day of the city election, which may include, without limitation:

(1) Sending voters to an alternative polling place;

(2) Seeking a court order to extend voting hours; or

(3) Requesting that voters return to the polling place after the disruption has been resolved.

3. In addition to the written contingency plan required by subsection 1, each city clerk shall submit to the Secretary of State a written contingency plan for the tabulation of ballots in the event that the city experiences a loss of the central counting equipment or the use of the central counting place. If the city clerk invokes this contingency plan, the city clerk must notify the Secretary of State in writing not later than 12 hours after doing so. The plan:

(a) Must, without limitation, identify alternative counting equipment and facilities; and

(b) May provide for the transport of ballots across city lines for the purpose of ballot tabulation if the ballots are inventoried and can be safeguarded by election staff and election board officers in the same manner as the ballots would be protected if the ballots were not transported.

4. Before each city election, the city clerk shall:

(a) Review the existing contingency plans required by subsections 1 and 3 and update the plans as necessary; and

(b) Ensure that any election staff in the office of the city clerk and all other relevant city employees have been briefed on the contingency plans.

Sec. 11. NAC 293C.360 is hereby amended to read as follows:

293C.360 **1.** The city clerk shall provide official printed ballots to be used at an election. The ballot stock must be ordered by the city clerk within 2 days after the date set for closing of registration for the election.

2. *As used in this section, “ballot stock” means:*

(a) The paper upon which a ballot is printed on which a voter directly indicates his or her vote; and

(b) The materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, envelope or sleeve into which the mail ballot is inserted to ensure its secrecy and voter instructions.

Sec. 12. This regulation becomes effective upon the later of:

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