

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R093-21

December 20, 2021

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

AUTHORITY: §§ 1, 10 and 19, NRS 293.124; § 2, NRS 293.124, 293.361 and 293.740; § 3, NRS 293.124 and 293.3733, as amended by section 26 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1228; §§ 4 and 5, NRS 293.124, 293.2733, as amended by section 26 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1228, and section 8 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1219-20 (NRS 293.269921); §§ 6-9, NRS 293.124 and section 8 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1219 (NRS 293.269921); § 11, NRS 293.124 and 293C.361; § 12, NRS 293.124 and 293C.2675, as amended by section 70 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1252; §§ 13 and 14; NRS 293.124, 293C.2675, as amended by section 70 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1252 and section 56 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1246 (NRS 293C.26321); §§ 15-18, NRS 293.124 and section 56 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1246 (NRS 293C.26321).

A REGULATION relating to elections; interpreting the term “polling place” for the purpose of certain statutes relating to electioneering; requiring certain requests relating to the establishment or removal of ballot drop boxes within the boundaries of an Indian reservation or Indian colony to be submitted on a form prescribed by the Secretary of State; requiring ballot drop boxes to be affixed with a unique identifier and the county or city seal or similar design; requiring the county and city clerk to submit a list to the Secretary of State containing certain information about the ballot drop boxes established in the county or city; establishing certain requirements relating to the security and accessibility of ballot drop boxes; requiring the county and city clerk to submit a plan to the Secretary of State relating to ballot drop boxes that are tampered with or rendered inaccessible; establishing provisions relating to mail ballot retrieval teams; requiring the county and city clerk to submit a report to the Secretary of State relating to the costs associated with ballot drop boxes and retrieval teams; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Secretary of State to adopt regulations relating to elections. (NRS 293.124)

Existing law provides that it is unlawful during early voting or on election day to electioneer inside of a polling place or within 100 feet from the entrance of a polling place. Existing law also requires the county and city clerk to ensure that certain notices relating to electioneering are posted at the outer limits of the area within which electioneering is prohibited. (NRS 293.361, 293.740, 293C.361) **Sections 2 and 11** of this regulation interpret the term “polling place” for the purpose of such electioneering statutes as meaning a place designated by the county or city clerk for the purpose of voting by personal appearance.

Existing law authorizes an Indian tribe to submit a request to the county or city clerk for the establishment of a ballot drop box within the boundaries of the Indian reservation or Indian colony for the day of certain elections. If the county or city clerk establishes such a ballot drop box, existing law requires the county or city clerk to continue to establish the ballot drop box for the day of any future primary election, presidential preference primary election or general election unless otherwise requested by the Indian tribe. (NRS 293.2733, as amended by section 8 of Assembly Bill No. 126, chapter 556, Statutes of Nevada 2021, at page 3882, and by section 26 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1228 and 293C.2675, as amended by section 70 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1252) **Sections 3 and 12** of this regulation require the request for the establishment or removal of the ballot drop box within the boundaries of the Indian reservation or Indian colony to be submitted to the county or city clerk on a form prescribed by the Secretary of State.

Existing law establishes various requirements relating to ballot drop boxes. (Sections 8 and 56 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1219, 1246 (NRS 293.269921, 293C.26321)

Sections 4 and 13 of this regulation require the county and city clerk to affix each ballot drop box with a unique identifier and the county or city seal, or similar design that signifies that the box is an official ballot drop box of the county or city.

Sections 5 and 14 of this regulation require the county and city clerk to submit a list to the Secretary of State of each ballot drop box established in the county or city. **Sections 5 and 14** require the list to include: (1) the unique identifier of the ballot drop box; (2) the location of the ballot drop box; and (3) the dates and times during which the ballot drop box will be unlocked and accessible for ballot submission. **Sections 5 and 14** also require the county and city clerk to submit an amended list to the Secretary of State not later than 24 hours after a change is made to the information contained in the list.

Sections 6 and 15 of this regulation establish various provisions relating to the security and accessibility of ballot drop boxes.

Sections 7 and 16 of this regulation require the county and city clerk to submit a plan to the Secretary of State that relates to ballot drop boxes that are tampered with or rendered inaccessible.

Sections 8 and 17 of this regulation require the county and city clerk to establish retrieval teams for the purpose of collecting and transporting mail ballots from ballot drop boxes to the receiving center or to the central counting place, as directed by the county or city clerk. **Sections 8 and 17** also establish the timeframe in which such retrieval teams must collect the mail ballots from the ballot drop boxes. Finally, **sections 8 and 17** require the retrieval teams to submit a form to the Secretary of State which describes the chain of custody of the mail ballots collected from the ballot drop boxes.

Sections 9 and 18 of this regulation require the county and city clerk to submit a report to the Secretary of State not later than 45 days after each general election. **Sections 9 and 18** require the report to include the costs associated with: (1) purchasing, installing and performing maintenance on the ballot drop boxes; and (2) the retrieval teams.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *As used in NRS 293.361 and 293.740, the Secretary of State will interpret the term “polling place” to mean any place that is designated by the county clerk for voting by personal appearance.*

Sec. 3. *A request by an Indian tribe for the establishment or removal of a ballot drop box pursuant to NRS 293.2733, as amended by section 26 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1228, must be submitted to the county clerk on a form prescribed by the Secretary of State.*

Sec. 4. 1. *The county clerk shall affix to each ballot drop box established in the county:*

(a) A unique identifier composed of:

(1) The abbreviation of the county name as prescribed by subsection 2; and

(2) A number; and

(b) The county seal or a similar design that indicates the ballot drop box is an official ballot drop box of the county.

2. The abbreviation of each county name is:

(a) Carson City—CC

(b) Churchill—CH

(c) Clark—CL

(d) Douglas—DO

- (e) Elko—EL*
- (f) Esmeralda—ES*
- (g) Eureka—EU*
- (h) Humboldt—HU*
- (i) Lander—LA*
- (j) Lincoln—LI*
- (k) Lyon—LY*
- (l) Mineral—MI*
- (m) Nye—NY*
- (n) Pershing—PE*
- (o) Storey—ST*
- (p) Washoe—WA*
- (q) White Pine—WP*

Sec. 5. 1. *The county clerk shall submit to the Secretary of State a list containing the following information for each ballot drop box established in the county:*

- (a) The unique identifier of the ballot drop box as described in section 4 of this regulation;*
- (b) The location of the ballot drop box; and*
- (c) The dates and times during which the ballot drop box will be unlocked and accessible to persons for the submission of mail ballots.*

2. *If there is a change during an election year to any of the information submitted on the list described in subsection 1, the county clerk must submit to the Secretary of State an explanation for the change and an amended list not later than 24 hours after the change is made.*

Sec. 6. 1. *If a ballot drop box is located outdoors and the county clerk or an employee of the county clerk is not constantly present at the location of the ballot drop box, the ballot drop box must be securely fastened in a manner that prevents it from being tampered with or moved.*

2. *In addition to any requirement set forth in subsection 1, if the county clerk or an employee of the county clerk is not constantly present at the location of a ballot drop box, the county clerk:*

(a) Shall ensure that the ballot drop box is locked at all times that a person is not authorized by law to submit a mail ballot; and

(b) May surveil the ballot drop box for its security, including, without limitation, by taking any of the following measures:

(1) Video recording the ballot drop box; or

(2) Partnering with a law enforcement agency or similar entity to patrol the ballot drop box.

3. *If a ballot drop box is located at a facility where the county clerk or an employee of the county clerk is constantly present, the county clerk must consider the ability of persons to access the ballot drop box for ballot submission on weekends and during evenings. The county clerk must take actions necessary to ensure that persons have adequate opportunity for ballot submission to the ballot drop box during early voting and on election day.*

Sec. 7. 1. *The county clerk shall develop and submit a plan to the Secretary of State relating to ballot drop boxes established in the county that are tampered with or rendered inaccessible during early voting or on election day. The plan must, include, without limitation:*

(a) Provision for the replacement of a ballot drop box that is tampered with or rendered inaccessible during early voting or on election day;

(b) The method that the county clerk will use to notify the public if a ballot drop box is tampered with or rendered inaccessible; and

(c) The location of the nearest ballot drop box to the ballot drop box that is tampered with or rendered inaccessible.

2. The plan described in subsection 1 must be submitted on a form prescribed by the Secretary of State.

Sec. 8. *1. The county clerk shall establish and use a retrieval team to collect and transport mail ballots from the ballot drop boxes established in the county to the receiving center or to the central counting place, as directed by the county clerk. If necessary, the county clerk may use multiple retrieval teams to collect and transport the mail ballots.*

2. A retrieval team shall be composed of at least two persons. If a ballot drop box is established within a polling place, the retrieval team must, if practicable, be composed of two members of the election board who are of differing political parties.

3. A retrieval team must frequently collect mail ballots from the ballot drop boxes established in the county beginning on the date that the mail ballots are issued and ending at the close of the polls on election day and as prescribed by subsection 4 or 5.

4. If there is a line of persons waiting to submit a mail ballot to the ballot drop box at the close of the polls on election day, a retrieval team shall:

(a) Hand the last person in line at the close of polls a card prepared by the county clerk that states “Last Person in Line”; and

(b) Refrain from collecting and transporting the mail ballots in the ballot drop box until the time that the person holding the card described in paragraph (a) has submitted the mail ballot.

5. If there is not a line of persons waiting to submit a mail ballot to the ballot drop box at the close of the polls on election day, the retrieval team shall immediately collect and transport the mail ballots.

6. Each retrieval team shall, on a form prescribed by the Secretary of State, submit to the Secretary of State, a description of the chain of custody of the mail ballots collected and transported by the retrieval team.

Sec. 9. *The county clerk shall, not later than 45 days after each general election, report to the Secretary of State:*

1. The cost of purchasing, installing and performing maintenance on the ballot drop boxes established in the county; and

2. Any costs associated with the retrieval teams described in section 8 of this regulation, including, without limitation, the cost of hiring, training and paying the retrieval teams.

Sec. 10. Chapter 293C of NAC is hereby amended by adding thereto the provisions set forth as sections 11 to 18, inclusive, of this regulation.

Sec. 11. *As used in NRS 293C.361, the Secretary of State will interpret the term “polling place” to mean any place that is designated by the city clerk for voting by personal appearance.*

Sec. 12. *A request by an Indian tribe for the establishment or removal of a ballot drop box pursuant to NRS 293C.2675, as amended by section 70 of Assembly Bill No. 321, chapter*

248, Statutes of Nevada 2021, at page 1252, must be submitted to the city clerk on a form prescribed by the Secretary of State.

Sec. 13. *The city clerk shall affix to each ballot drop box:*

1. A unique identifier composed of:

(a) The name of the city; and

(b) A number; and

2. The city seal or a similar design that indicates that the ballot drop box is an official ballot drop box of the city.

Sec. 14. *1. The city clerk shall submit to the Secretary of State a list containing the following information for each ballot drop box established in the city:*

(a) The unique identifier of the ballot drop box as described by section 13 of this regulation;

(b) The location of the ballot drop box; and

(c) The dates and times during which the ballot drop box will be unlocked and accessible to persons for the submission of mail ballots.

2. If there is a change during an election year to any of the information submitted on the list described in subsection 1, the city clerk must submit to the Secretary of State an explanation for the change and an amended list not later than 24 hours after the change is made.

Sec. 15. *1. If a ballot drop box is located outdoors and the city clerk or an employee of the city clerk is not constantly present at the location of the ballot drop box, the ballot drop box must be securely fastened in a manner that prevents it from being tampered with or moved.*

2. In addition to any requirement set forth in subsection 1, if the city clerk or an employee of the city clerk is not constantly present at the location of a ballot drop box, the city clerk:

(a) Shall ensure that the ballot drop box is locked at all times that a person is not authorized by law to submit a mail ballot; and

(b) May surveil the ballot drop box for its security, including, without limitation, by taking any of the following measures:

(1) Video recording the ballot drop box; or

(2) Partnering with a law enforcement agency or similar entity to patrol the ballot drop box.

3. If a ballot drop box is located at a facility where the city clerk or an employee of the city clerk is constantly present, the city clerk must consider the ability of persons to access the ballot drop box for ballot submission on weekends and during evenings. The city clerk must take actions necessary to ensure that persons have adequate opportunity for ballot submission to the ballot drop box during early voting and on election day.

Sec. 16. 1. *The city clerk shall develop and submit a plan to the Secretary of State relating to ballot drop boxes established in the city that are tampered with or rendered inaccessible during early voting or on election day. The plan must, include, without limitation:*

(a) Provision for the replacement of a ballot drop box that is tampered with or rendered inaccessible during early voting or on election day;

(b) The method that the city clerk will use to notify the public if a ballot drop box is tampered with or rendered inaccessible; and

(c) The location of the nearest ballot drop box to the ballot drop box that is tampered with or rendered inaccessible.

2. The plan described in subsection 1 must be submitted on a form prescribed by the Secretary of State.

Sec. 17. *1. The city clerk shall establish and use a retrieval team to collect and transport mail ballots from the ballot drop boxes established in the city to the receiving center or to the central counting place, as directed by the city clerk. If necessary, the city clerk may use multiple retrieval teams to collect and transport the mail ballots.*

2. A retrieval team shall be composed of not less than two persons. If a ballot drop box is established within a polling place, the retrieval team must, if practicable, be composed of two members of the election board who are of differing political parties.

3. A retrieval team must frequently collect mail ballots from the ballot drop boxes established in the city beginning on the date that the mail ballots are issued and ending at the close of the polls on election day and as prescribed by subsection 4 or 5.

4. If there is a line of persons waiting to submit a mail ballot to the ballot drop box at the close of the polls on election day, a retrieval team shall:

(a) Hand the last person in line at the close of the polls a card prepared by the city clerk that states “Last Person in Line”; and

(b) Refrain from collecting and transporting the mail ballots in the ballot drop box until the time that the person holding the card described in paragraph (a) has submitted the mail ballot.

5. If there is not a line of persons waiting to submit a mail ballot to the ballot drop box at the close of the polls on election day, the retrieval team shall immediately collect and transport the mail ballots.

6. Each retrieval team shall, on a form prescribed by the Secretary of State, submit to the Secretary of State, a description of the chain of custody of the mail ballots collected and transported by the retrieval team.

Sec. 18. *The city clerk shall, not later than 45 days after each general election, report to the Secretary of State:*

1. The cost of purchasing, installing and performing maintenance on the ballot drop boxes established in the city; and

2. Any costs associated with the retrieval teams described in section 17 of this regulation, including, without limitation, the costs of hiring, training and paying the retrieval teams.

Sec. 19. This regulation becomes effective on the later of:

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