

APPROVED REGULATION OF THE

SECRETARY OF STATE

LCB File No. R008-23

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

AUTHORITY: § 1, NRS 293.124, 293.247, 298.640 and 298.710; §§ 2 and 5, NRS 293.124, 293.247, 298.640 and 298.690; § 3, NRS 293.124, 293.247, 293.275, 298.640 and 298.690; § 4, NRS 293.124, 293.26921 and 298.640.

A REGULATION relating to elections; applying certain regulations relating to ballot stock, contingency plans, testing of electronic rosters and voting equipment to presidential preference primary elections; 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, including, without limitation, presidential preference primary elections, primary elections and general elections. (NRS 293.124, 293.247, 298.640) This regulation revises various requirements for the conduct of elections to include presidential preference primary elections.

Existing law requires the cost of a presidential preference primary election to be charged against the State and paid from a certain account upon recommendation of the Secretary of State and approval of the State Board of Examiners. (NRS 298.710) Existing regulations provide that the Secretary of State will reimburse a county for the cost of basic ballot stock for primary and general elections. (NAC 293.200) **Section 1** of this regulation provides for the reimbursement of a county for the cost of basic ballot stock for presidential preference primary elections.

Existing regulations require each county clerk to submit to the Secretary of State not later than 60 days before a general election a written contingency plan in the event that election operations are significantly disrupted. (NAC 293.202) **Section 2** of this regulation requires such a plan to be submitted to the Secretary of State before any election.

Existing regulations require a county clerk who uses an electronic roster for an election to conduct logic and accuracy tests on the electronic roster, which testing must confirm that the electronic roster accurately displays information that includes, without limitation, whether the election is a primary election, general election or special election. (NAC 293.228) **Section 3** of this regulation requires the logic and accuracy test to also include whether the electronic roster accurately displays whether the election is a presidential preference primary election.

Existing law sets forth certain requirements relating to ballot drop boxes and retrieval teams. (NRS 293.26921, 298.640) Existing regulations require a county clerk to report to the Secretary of State costs related to ballot drop boxes and retrieval teams 45 days after each

general election. (NAC 293.353) **Section 4** of this regulation requires a county clerk to instead report such costs to the Secretary of State 45 days after each election.

Existing regulations require that each county clerk and city clerk shall, not later than the 90th day before a general election, submit to the Secretary of State a plan to ensure the accuracy and security of mechanical voting systems, mechanical voting devices and other voting equipment in the county or city. (NAC 293B.040) **Section 5** of this regulation requires such a plan to be submitted not later than the 90th day before any election.

Section 1. 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. 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 the presidential preference primary election not later than March 30 of the year in which the presidential preference primary election is held.*

(b) For the cost of the basic ballot stock for the primary election not later than June 30 of the year in which the general election is held.

~~(b)~~ (c) 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) , ~~(b)~~ ~~(b)~~ *or (c).*

Sec. 2. NAC 293.202 is hereby amended to read as follows:

293.202 1. Each county clerk shall, not later than 60 days before the date of ~~the general~~ *any* 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. 3. NAC 293.228 is hereby amended to read as follows:

293.228 1. If a county clerk uses an electronic roster for an election, the county clerk must conduct logic and accuracy tests on the electronic roster and certify to the Secretary of State that the testing was completed by the deadline set forth in NRS 293.275.

2. The testing required pursuant to subsection 1 must confirm, without limitation:

(a) That each electronic roster accurately displays:

(1) The date and time;

(2) The date of the election and the type of election, including, without limitation, whether the election is a *presidential preference primary election*, primary election, general election or special election;

(3) The name of the county;

(4) The number of voter files contained in the electronic roster;

(5) The precinct and number of voters in the precinct, if applicable;

(6) The current version of the operating system; and

(7) The signature records of the voters in the county;

(b) For at least one electronic roster assigned to each polling place, the correct functioning of the electronic roster for the following situations:

(1) A registered voter in the county who appears to vote in person who has not voted in the election;

(2) A registered voter in the county who appears to vote in person where the electronic roster shows that a ballot connected to the voter has already been received or voted;

(3) A person who claims to be registered to vote who cannot be located in the electronic roster;

(4) A registered voter who is listed as inactive in the electronic roster;

(5) A registered voter who spoils his or her ballot;

(6) A registered voter who appears to vote in person and brings his or her unvoted mail ballot;

(7) A registered voter who would like to change his or her political party affiliation;

(8) A registered voter who would like to update his or her voter registration information;

and

(9) A registered voter in a county with a precinct split; and

(c) The correct performance of the following functions of the electronic roster:

(1) Printing labels;

(2) Printing activation cards or ballot cards;

(3) That a ballot issued by one electronic roster is indicated as issued on other electronic rosters;

(4) Preparing turnout reports;

(5) Preparing daily totals; and

(6) That the roster uploads correctly to the office of the county clerk.

Sec. 4. NAC 293.353 is hereby amended to read as follows:

293.353 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 NAC 293.352, including, without limitation, the cost of hiring, training and paying the retrieval teams.

Sec. 5. 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;

(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. Each county and city clerk shall, not later than the 90th day before ~~the general~~ *any* 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 (e) of subsection 3 of NRS 293.247 concerning the procedures to be used to ensure the security of the ballots, results cartridges, VVPATs, 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;

(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

(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.