

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB FILE NO. R012-23I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/22/2023**

2023 Regulatory Review

Regulations related to the PPP must be in place no later than the last business day of September (Sept 29, 2023)

1. Adjustments to existing regulations in NAC 293B

a. Amend NAC 293B.010(5) as follows:

5. “Results cartridge” means *an elections media cartridge or memory device* which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

b. Amend NAC 293B.017 as follows:

NAC 293B.017 Ballot duplicating board: Authorized creation; members; duties. (NRS 293.124, 293.247, 293B.360, 293B.375)

1. *The county clerk may create a ballot duplicating board and appoint its members. If practicable, the members must be of different political parties. The same person may be appointed to more than one board or perform additional functions as an election board officer.*

2. ~~*If a ballot is damaged or defective such that it cannot be read by a mechanical device or other electronic means,*~~ *The ballot duplicating board must duplicate the ballot and the duplicate ballot must be counted in place of the damaged ballot if:*

A. A ballot is damaged or defective such that it cannot be read by a mechanical device or other electronic means; or

B. A ballot has been received via the system of approved electronic transmission established pursuant to NRS 293D.200.

3. *The ballot duplicating board shall:*

(a) Ensure that the correct precinct and ballot style is used to create the duplicate ballot;

(b) affix a unique serial number on the ballot and log the duplicate ballot and unique serial number in a ballot duplication log;

(c) Mark the duplicate ballot so that the duplicate is identical to the original ballot;

(d) After finishing marking the duplicate ballot, verify that the duplicate ballot is identical to the original ballot, including, without limitation, any overvotes or undervotes;

~~*(d) Log the duplicate ballot and the serial number of the duplicate ballot in the ballot duplication log; and*~~

(e) If any errors are made while marking the duplicate ballot, mark the duplicate ballot as “SPOILED” and repeat the procedures set forth in paragraphs (a) to (d), inclusive, to create a new duplicate ballot.

4. Each county clerk shall establish a procedure for duplicating ballots that must be approved by the Secretary of State before being used in the county.

5. As used in this section:

(a) "Duplicate" means the process of preparing a new ballot to replace a damaged or defective ballot, including, without limitation, ballots that have been torn, bent or mutilated, **or a ballot received by approved electronic transmission.**

(b) "Duplicate ballot" means the ballot prepared by a ballot duplicating board to replace a damaged ballot.

c. Amend NAC 293B.022 as follows:

NAC 293B.022 Maintenance of documentary record for mechanical voting system, mechanical voting device and other voting equipment; inspection; seals. (NRS 293.124, 293.247)

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.

(c) All serial number of the machine being sent for repairs/replacement; the date the item(s) were sent out for repairs/replacement; the repairs being completed, or if replaced then the serial number of the replacement machine.

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

d. Amend NAC 293B.040 as follows:

i. Remove NAC 293B.040(2)(c) as county election officials do not know the name of these individuals 90 days out from an election:

(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

ii. Remove NAC 293B.040(2)(d) as the requirement to include the time allotted for travel is burdensome, rarely accurate, and needless.

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

e. Amend NAC 293B.050 as follows:

NAC 293B.050 Security of election computer program. (NRS 293.124, 293.247, 293B.135)

1. As used in NRS 293B.135, “election computer program” means the tape, **firmware**, 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.

3. A copy of the election computer program must be 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; 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.

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.

f. Amend NAC 293B.100 as follows:

NAC 293B.100 Use of bar codes to audit paper record printed by VVPAT. (NRS 293.124, 293.247)
If a county uses bar codes **or QR codes** on the paper printed by a VVPAT to verify the ballots on a mechanical recording device, the county clerk shall randomly select two bar codes **or QR codes** for each paper record printed by the VVPAT to audit the paper record printed by the VVPAT.

g. Amend NAC 293B.120 as follows:

NAC 293B.120 Postelection audit for verification of operating systems. (NRS 293.124, 293.247)

1. ~~A~~**Not later than 30 days** after each election, each county clerk shall conduct a postelection audit of mechanical recording devices randomly selected pursuant to subsection 3 or 4 to verify that the operating systems, including, without limitation, software and firmware, installed on each mechanical recording device used in the election are the operating systems that were certified before the election pursuant to NAC 293B.110.