

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB File No. R012-23

July 17, 2023

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

AUTHORITY: § 1, NRS 293.124, 293.247, 293.3677 and 293B.105; §§ 2 and 3, NRS 293.124, 293.247, 293B.360 and 293B.375; §§ 4, 5, 7 and 8, NRS 293.124 and 293.247; § 6, NRS 293.124, 293.247 and 293B.135.

A REGULATION relating to elections; revising certain definitions relating to elections; revising certain duties of a ballot duplicating board created by a county clerk; revising 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; providing a deadline for a county clerk to perform a postelection audit of certain mechanical recording devices; 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)

Existing law authorizes a county clerk to create a ballot duplicating board whose duties include receiving damaged ballots and preparing exact copies of damaged ballots that are serially numbered so that the duplicated ballots may later be counted. (NRS 293B.360, 293B.375) Existing regulations require a ballot duplicating board to: (1) duplicate a ballot that is damaged or defective; and (2) log the duplicate ballot and the serial number of the duplicate ballot in the ballot duplication log. (NAC 293B.017) **Section 3** of this regulation additionally requires a ballot duplicating board to: (1) duplicate a ballot that is received through a system of approved electronic transmission; and (2) affix a unique serial number on the duplicate ballot.

Existing regulations require 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: (1) records of transports of mechanical voting systems, mechanical voting devices and other voting equipment; and (2) chain-of-custody records for mechanical voting systems, mechanical voting devices and other voting equipment. (NAC 293B.022) **Section 4** of this regulation additionally requires each county clerk and city clerk to maintain a written documentary record of the serial numbers of each mechanical voting system, mechanical

voting device and other voting equipment that is repaired or replaced, including, without limitation: (1) the date the mechanical voting system, mechanical voting device or other voting equipment was sent for repairs or replacement; and (2) a description of the repairs or the serial number of the replacement mechanical voting system, mechanical voting device or other voting equipment, as applicable.

Existing regulations require that each county clerk and city clerk, not later than the 90th day before the general 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, VVPATS, election media cartridges or memory devices, blank ballot stock, chain-of-custody records and access controls. (NAC 293B.040) **Section 5** of this regulation eliminates the requirements for the plan to: (1) identify the person who is responsible for transporting the ballots, results cartridges and VVPATs from the polling place to the central counting place; and (2) include the time allotted for travel from the polling place to the central counting place.

Existing regulations define “results cartridge” to mean a cartridge which contains the electronically recorded ballots cast during an election and from which the ballots are tabulated. (NAC 293.010, 293B.010) **Sections 1 and 2** of this regulation revise the definition of “results cartridge” to mean an election media cartridge or memory device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

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) Existing regulations require the copy of each election computer program to be delivered by certified mail to the Secretary of State. (NAC 293B.050) **Section 6** of this regulation: (1) revises the definition of “election computer program” to include firmware; and (2) eliminates the requirement that a copy of each election computer program must be delivered by certified mail.

Existing regulations require a county clerk to randomly select two bar codes for each paper record printed by a VVPAT to audit the paper record printed by the VVPAT, if the county uses bar codes on the paper printed by the VVPAT to verify the ballots on a mechanical recording device. (NAC 293B.100) **Section 7** of this regulation additionally requires the county clerk to randomly select two QR codes for each paper record printed by the VVPAT to audit the paper record printed by the VVPAT, if the county uses QR codes on the paper printed by the VVPAT to verify the ballots on a mechanical recording device.

Existing regulations require each county clerk to conduct a postelection audit of certain mechanical recording devices to verify that the operating systems installed on each mechanical recording device used in the election are the operating systems that were certified before the election. (NAC 293B.120) **Section 8** of this regulation requires each county clerk to perform such postelection audit not later than 30 days after each election.

Section 1. 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:

(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.

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

3. “Mail ballot” has the meaning ascribed to it in NRS 293.0653.

4. “Results cartridge” means ~~the~~ *an elections media* cartridge ~~of a mechanical recording device~~ *or memory device* which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

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

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

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.

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

9. “Vote center” means a polling place established by the county or city clerk, as applicable, pursuant to the provisions of NRS 293.3072 to 293.3075, inclusive, or 293C.3032 to 293C.3035, inclusive, as applicable, where any person entitled to vote by personal appearance in the county or city, as applicable, may do so on the day of the election.

Sec. 2. NAC 293B.010 is hereby amended to read as follows:

293B.010 As used in this chapter, unless the context otherwise requires:

1. “Ballot marking device” means a device which allows a registered voter to mark a paper ballot which is subsequently counted on an electronic tabulator, counting device or computer.
2. “Firmware” means programming instructions that are stored in a read-only memory format within a mechanical recording device rather than being implemented through software.
3. “Mechanical recording device” has the meaning ascribed to it in NRS 293B.032.
4. “Mechanical voting system” has the meaning ascribed to it in NRS 293B.033.
5. “Results cartridge” means ~~fa~~ *an elections media* cartridge *or memory device* which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.
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 accurately recorded the votes of the voter.

Sec. 3. NAC 293B.017 is hereby amended to read as follows:

- 293B.017 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~~ *The* ballot duplicating board must duplicate ~~the~~ *a* ballot and the duplicate ballot must be counted in place of the ~~damaged~~ ballot ~~if~~ *if*:

(a) The ballot is damaged or defective such that it cannot be read by a mechanical recording device or other electronic means; or

- (b) The ballot is received through 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) Mark the duplicate ballot so that the duplicate is identical to the original ballot;
 - (c) 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~~ *Affix a unique serial number on the ballot and 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 ~~it~~ :

(1) A ballot received through the system of approved electronic transmission established pursuant to NRS 293D.200; or

(2) A damaged or defective ballot, including, without limitation, ballots that have been torn, bent or mutilated.

(b) “Duplicate ballot” means the ballot prepared by a ballot duplicating board to replace a *ballot received through a system of approved electronic transmission or a* damaged ballot.

Sec. 4. NAC 293B.022 is hereby amended to read as follows:

293B.022 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 ~~and~~ ; *and*

(c) The serial numbers of each mechanical voting system, mechanical voting device and other voting equipment that is repaired or replaced, including, without limitation:

(1) The date the mechanical voting system, mechanical voting device or other voting equipment was sent for repairs or replacement; and

(2) A description of the repairs or the serial number of the replacement mechanical voting system, mechanical voting device or other voting equipment, 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. 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 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; *and*

(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.

Sec. 6. 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, *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 ~~filed~~ ~~without limitation:~~

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

~~—(b) Provided~~ *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.

Sec. 7. NAC 293B.100 is hereby amended to read as follows:

293B.100 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.

Sec. 8. NAC 293B.120 is hereby amended to read as follows:

293B.120 1. ~~After~~ *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.

2. The county clerk shall verify operating systems pursuant to subsection 1 by confirming that each component of such operating systems matches the identity registered with the National Software Reference Library.

3. For the postelection audit conducted pursuant to subsection 1, the county clerk of a county whose population is 100,000 or more shall randomly select a number of mechanical recording devices that is at least 2 percent of the number of mechanical recording devices used in the election, or not less than 20 mechanical recording devices, whichever is greater.

4. For the postelection audit conducted pursuant to subsection 1, the county clerk of a county whose population is less than 100,000 shall randomly select a number of mechanical recording devices that is at least 3 percent of the number of mechanical recording devices, or not less than four mechanical recording devices, whichever is greater.