

## LEGISLATIVE BILL 964

Approved by the Governor April 12, 1996

Introduced by Cudaback, 36; Dierks, 40; Janssen, 15; Schmitt, 41; Vrtiska, 1; Schimek, 27

AN ACT relating to elections; to amend sections 32-559 and 32-808, Revised Statutes Supplement, 1994, and sections 32-101 and 32-202, Revised Statutes Supplement, 1995; to provide for special elections in political subdivisions to be conducted by mail; to provide powers and duties for election commissioners, county clerks, and the Secretary of State; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 32-101, Revised Statutes Supplement, 1995, is amended to read:

32-101. Sections 32-101 to 32-1550 and sections 5 to 13 of this act shall be known and may be cited as the Election Act.

Sec. 2. Section 32-202, Revised Statutes Supplement, 1995, is amended to read:

32-202. In addition to any other duties prescribed by law, the Secretary of State shall:

- (1) Supervise the conduct of primary and general elections in this state;
- (2) Provide training for election commissioners, county clerks, and other election officials in providing for registration of voters and the conduct of elections;
- (3) Enforce the Election Act;
- (4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;
- (5) Provide periodic training for the agencies and their agents and contractors in carrying out their duties under sections 32-308 to 32-310;
- (6) Develop and print forms for use as required by sections 32-308, 32-310, 32-320, and 32-329 and sections 8, 9, and 11 of this act;
- (7) Contract with the Department of Administrative Services for storage and distribution of the forms;
- (8) Require reporting to ensure compliance with sections 32-308 to 32-310;
- (9) Prepare and transmit reports as required by the National Voting Rights Act of 1993, 42 U.S.C. 1973gg et seq.;
- (10) Develop and print a manual describing the requirements of the initiative and referendum process and distribute the manual to election commissioners and county clerks for distribution to the public upon request; **and**
- (11) Develop and print pamphlets described in section 32-1405.01; **and**
- (12) Adopt and promulgate rules and regulations for elections conducted under sections 5 to 12 of this act.

Sec. 3. Section 32-559, Revised Statutes Supplement, 1994, is amended to read:

32-559. Any issue to be submitted to the registered voters at a special election by a political subdivision shall be certified by the clerk of the political subdivision to the election commissioner or county clerk at least fifty days prior to the election. A special election may be held by mail as provided in sections 5 to 12 of this act. No special election to be conducted by the election commissioner or county clerk shall be held within thirty days prior to or sixty days after the statewide primary election, and no special election to be conducted by the election commissioner or county clerk shall be held within thirty days prior to or sixty days after the statewide general election.

In lieu of submitting the issue at a special election, any political subdivision may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the clerk of the political subdivision to the election commissioner or county clerk by March 1 for the primary election and by September 1 for the general election. After the election commissioner or county clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the

issue to the registered voters, except that the clerk of the political subdivision shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The election commissioner or county clerk shall prepare the ballots and issue absentee ballots and shall also conduct the submission of the issue, including the receiving and counting of the ballots on the issue. The election returns shall be made to the election commissioner or county clerk. The ballots, including absentee ballots, shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the county canvassing board, the election commissioner or county clerk shall certify the election results to the governing body of the political subdivision. The canvass by the county canvassing board shall have the same force and effect as if made by the governing body of the political subdivision.

Sec. 4. Section 32-808, Revised Statutes Supplement, 1994, is amended to read:

32-808. (1) Absentee ballots and applications shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

(2) Notwithstanding subsection (1) of this section, upon request for a ballot, an absentee ballot shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election. The election commissioner or county clerk shall not forward any absentee ballot or special absentee ballot if the election to which such ballot pertains has already been held. If the absentee ballot has not been printed in sufficient time to meet the requirements of this subsection, the election commissioner or county clerk shall issue a special absentee ballot to each voter meeting the criteria of such section at least fifty-seven days prior to an election upon the written request by such voter requesting the special absentee ballot. A complete list of the nominated candidates and issues to be voted upon by a voter meeting the criteria of such section shall be included with the special absentee ballot by the election commissioner or county clerk. A notice shall be sent with the primary election ballot stating that the absentee voter must request a general election ballot unless such voter has requested both the primary and general election ballots. If the voter has requested both ballots, a notice shall be sent with the primary election ballot stating that the general election ballot will be sent to the same address unless otherwise notified.

(3) For purposes of this section, a special absentee ballot shall mean a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and shall permit the voter to vote by writing in the names of the specific candidates or the decision on any issue.

(4) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for an absentee ballot after the ballots become available. The application form shall be prescribed by the Secretary of State and shall include the reasons a registered voter is permitted to vote absentee as enumerated in section 32-938. The publication of the application for an absentee ballot shall not be required if the election is held by mail pursuant to sections 5 to 12 of this act.

Sec. 5. A political subdivision may, by resolution of the governing body of the subdivision or by ordinance in the case of a city or village, adopted by two-thirds of the members of the governing body, hold a special election by mail as provided in section 6 of this act under the following conditions:

(1) All registered voters of the political subdivision are eligible to vote on the issue or issues;

(2) Only registered voters of the political subdivision are eligible to vote on the issue or issues;

(3) Only issues and not candidates are submitted to the registered voters;

(4) The governing body of the political subdivision determines a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote;

(5) The clerk of the political subdivision certifies the issue or issues to the election commissioner or county clerk at least fifty days prior to the date of the election; and

(6) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the

election, submitted by the election commissioner or county clerk who would be responsible for conducting the election. The written plan shall include provisions for the notice of election to be published and for the application for absentee ballots notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for absentee ballots.

Sec. 6. The election commissioner or county clerk shall mail the official ballot to all registered voters of the political subdivision at the addresses appearing on the voter registration register on the same day. The ballots shall be mailed by nonforwardable first-class mail not sooner than the twentieth day before the date set for the election and not later than the tenth day before the date set for the election. The election commissioner or county clerk shall include with the ballot a secrecy envelope, a return identification envelope, and instructions sufficient to describe the voting process.

Sec. 7. Upon receipt of the official ballot, the registered voter shall mark it, seal the ballot in the secrecy envelope, sign the return identification envelope supplied with the ballot, and comply with the instructions provided with the ballot. The voter may return the ballot to the election commissioner or county clerk by mailing it or by personally delivering it to the office of the election commissioner or county clerk. The deadline for receipt of the ballot is 5 p.m. on the date set for the election if the ballot is personally delivered or 10 a.m. on the second day after the date set for the election if the ballot is mailed. Ballots which are returned by mail shall be accepted for approval by the counting board if they are in the physical possession of the election commissioner or county clerk not later than 10 a.m. on the second day after the date set for the election. The official ballot must be returned in the return identification envelope. The registered voter shall, by signing the envelope, certify to the facts contained on the envelope. The election commissioner or county clerk shall keep the return identification envelopes received from registered voters unopened in a fireproof safe or other suitable location which is locked until delivered to the counting board.

Sec. 8. The return identification envelope shall contain a statement and warning in substantially the following form:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (1) I am a registered voter in ..... County;
- (2) I live in the State of Nebraska at the address printed below;
- (3) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and
- (4) I have not voted and will not vote in this election except by this ballot.

Any person who signs this form knowing that any of the information in the form is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both.

I also understand that failure to complete the information below will invalidate my ballot.

.....  
Signature

.....  
Printed Name

.....  
Residence Address

Sec. 9. If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by noon on the date set for the election. If the voter mails the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the Friday before the date set for the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Sec. 10. An official ballot under section 6 of this act shall be counted only if it is returned in the sealed secrecy envelope which is in the

return identification envelope, the envelope is signed by the voter to whom it was issued, and the signature is verified by the election commissioner or county clerk. The election commissioner or county clerk shall verify the signature on each return identification envelope received in his or her office with the signature appearing on the voter registration records. If the election commissioner or county clerk is unable to verify a signature, the election commissioner or county clerk shall contact the voter within two days after determining that he or she is unable to verify the signature to ascertain whether the voter cast a ballot. The election commissioner or county clerk may request that the registered voter sign and submit a current signature card pursuant to section 32-318. The election commissioner or county clerk may begin verifying the signatures as the envelopes are received in his or her office. If the election commissioner or county clerk determines that a voter has voted more than once, no ballot cast by that voter in that election shall be counted. The election commissioner or county clerk shall not make public any record or list of registered voters who have returned their ballots until the election has been certified by the canvassing board.

Sec. 11. The election commissioner or county clerk shall supervise the procedures for handling and canvassing the ballots to ensure the safety and confidentiality of all ballots properly cast. The election commissioner or county clerk shall file with the Secretary of State and the county board an election report. The Secretary of State shall develop a uniform election report form which requires information, including, but not limited to, an evaluation of the verification process including the number of ballots rejected and the reasons for the rejection, the process for handling and canvassing ballots, and the cost of the election conducted by mail. The election commissioner or county clerk shall appoint a counting board for the election in the same manner as the absentee ballots counting board and ballots shall be counted and canvassed in the same manner as much as possible.

Sec. 12. The names of voters whose ballots are returned as undeliverable shall be subject to removal from the voter registration records as provided in sections 32-326 to 32-329.

Sec. 13. Any person who (1) impersonates or makes a false representation in order to obtain a ballot for an election to be held by mail as provided in sections 5 to 12 of this act, (2) knowingly connives to help a person to vote such a ballot illegally, (3) destroys, steals, marks, or mutilates any such ballot after the same has been voted or aids or abets another to do so, (4) delays in delivering such a ballot to the election commissioner or county clerk to prevent the ballot from arriving in time to be counted, (5) in any manner aids or attempts to aid any person to vote such a ballot unlawfully, (6) hinders or attempts to hinder a registered voter from voting any such ballot, or (7) hinders or attempts to hinder any official from delivering or counting any such ballot shall be guilty of a Class IV felony.

Sec. 14. Original sections 32-559 and 32-808, Revised Statutes Supplement, 1994, and sections 32-101 and 32-202, Revised Statutes Supplement, 1995, are repealed.