

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 742

Introduced by Murante, 49.

Read first time January 09, 2014

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to elections; to amend sections 32-701, 32-801,
2 32-817, 32-901, 32-1003, 32-1119, 32-1120, 32-1122, and
3 49-220, Reissue Revised Statutes of Nebraska, sections
4 32-546.01 and 32-816, Revised Statutes Cumulative
5 Supplement, 2012, and sections 32-101, 32-1005, and
6 32-1007, Revised Statutes Supplement, 2013; to change the
7 method of voting at primary elections; to change and
8 eliminate provisions related to recounts and tie votes;
9 to harmonize provisions; and to repeal the original
10 sections.

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

1 Section 1. Section 32-101, Revised Statutes Supplement,
2 2013, is amended to read:

3 32-101 Sections 32-101 to 32-1551 and section 9 of this
4 act shall be known and may be cited as the Election Act.

5 Sec. 2. Section 32-546.01, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

7 32-546.01 (1) Each learning community shall be governed
8 by a learning community coordinating council consisting of eighteen
9 voting members, with twelve members elected on a nonpartisan ballot
10 from six numbered subcouncil districts created pursuant to section
11 32-555.01 and with six members appointed from such subcouncil
12 districts pursuant to this section. At the primary election, each
13 voter shall be allowed to vote for one candidate by ranking the
14 candidate as number one for the nomination to represent the
15 subcouncil district in which the voter resides and ranking the
16 remaining candidates in order of his or her preference. Each voter
17 shall be allowed to cast votes for one candidate at ~~both the primary~~
18 ~~and general elections~~ the general election to represent the
19 subcouncil district in which the voter resides. The four candidates
20 receiving the most votes at the primary election shall advance to the
21 general election. The two candidates receiving the most votes at the
22 general election shall be elected. A candidate shall reside in the
23 subcouncil district for which he or she is a candidate. Coordinating
24 council members shall be elected on the nonpartisan ballot.

25 (2) The initial elected members shall be nominated at the

1 statewide primary election and elected at the statewide general
2 election immediately following the certification of the establishment
3 of the learning community, and subsequent members shall be nominated
4 at subsequent statewide primary elections and elected at subsequent
5 statewide general elections. Except as provided in this section, such
6 elections shall be conducted pursuant to the Election Act.

7 (3) Vacancies in office for elected members shall occur
8 as set forth in section 32-560. Whenever any such vacancy occurs, the
9 remaining elected members of such council shall appoint an individual
10 residing within the geographical boundaries of the subcouncil
11 district for the balance of the unexpired term.

12 (4) Members elected to represent odd-numbered districts
13 in the first election for the learning community coordinating council
14 shall be elected for two-year terms. Members elected to represent
15 even-numbered districts in the first election for the learning
16 community coordinating council shall be elected for four-year terms.
17 Members elected in subsequent elections shall be elected for four-
18 year terms and until their successors are elected and qualified.

19 (5) The appointed members shall be appointed in November
20 of each even-numbered year after the general election. Appointed
21 members shall be school board members of school districts in the
22 learning community either elected to take office the following
23 January or continuing their current term of office for the following
24 two years. For learning communities to be established the following
25 January pursuant to orders issued pursuant to section 79-2102, the

1 Secretary of State shall hold a meeting of the school board members
2 of the school districts in such learning community to appoint one
3 member from such school boards to represent each of the subcouncil
4 districts on the coordinating council of such learning community. For
5 subsequent appointments, the current appointed members of the
6 coordinating council shall hold a meeting of the school board members
7 of such school districts to appoint one member from such school
8 boards to represent each of the subcouncil districts on the
9 coordinating council of the learning community. The appointed members
10 shall be selected by the school board members of the school districts
11 in the learning community who reside in the subcouncil district to be
12 represented pursuant to a secret ballot, shall reside in the
13 subcouncil district to be represented, and shall be appointed for
14 two-year terms and until their successors are appointed and
15 qualified.

16 (6) Vacancies in office for appointed members shall occur
17 upon the resignation, death, or disqualification from office of an
18 appointed member. Disqualification from office shall include ceasing
19 membership on the school board for which membership qualified the
20 member for the appointment to the learning community coordinating
21 council or ceasing to reside in the subcouncil district represented
22 by such member of the learning community coordinating council.
23 Whenever such vacancy occurs, the remaining appointed members shall
24 hold a meeting of the school board members of the school districts in
25 such learning community to appoint a member from such school boards

1 who lives in the subcouncil district to be represented to serve for
2 the balance of the unexpired term.

3 (7) Each learning community coordinating council shall
4 also have a nonvoting member from each member school district which
5 does not have either an elected or an appointed member who resides in
6 the school district on the council. Such nonvoting members shall be
7 appointed by the school board of the school district to be
8 represented to serve for two-year terms, and notice of the nonvoting
9 member selected shall be submitted to the Secretary of State by such
10 board prior to December 31 of each even-numbered year. Each such
11 nonvoting member shall be a resident of the appointing school
12 district and shall not be a school administrator employed by such
13 school district. Whenever a vacancy occurs, the school board of such
14 school district shall appoint a new nonvoting member and submit
15 notice to the Secretary of State and to the learning community
16 coordinating council.

17 (8) Members of a learning community coordinating council
18 shall take office on the first Thursday after the first Tuesday in
19 January following their election or appointment, except that members
20 appointed to fill vacancies shall take office immediately following
21 administration of the oath of office. Each voting member elected or
22 appointed prior to April 6, 2010, shall be paid a per diem in an
23 amount determined by such council up to two hundred dollars per day
24 for official meetings of the council and the achievement subcouncil
25 for which he or she is a member, for meetings that occur during the

1 term of office for which the election or appointment of the member
2 took place prior to April 6, 2010, up to a maximum of twelve thousand
3 dollars per fiscal year. Each voting member shall be eligible for
4 reimbursement of reasonable expenses related to service on the
5 learning community coordinating council. Each nonvoting member shall
6 be eligible for reimbursement of reasonable expenses related to
7 service on the learning community coordinating council.

8 Sec. 3. Section 32-701, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 32-701 When candidates for the office of President of the
11 United States are to be nominated, every registered voter of a
12 political party shall have the opportunity to vote his or her
13 preference on his or her party nominating ballot for his or her
14 choice for one person to be the candidate of his or her political
15 party for President of the United States by ~~writing the name of the~~
16 ~~person of his or her choice for President in the blank space to be~~
17 ~~left upon the ballot for such purpose and making a cross or mark in~~
18 ~~the square or oval opposite the written name or by making a cross or~~
19 ~~mark in the square or oval opposite the printed name of the person of~~
20 ~~his or her choice.~~ ranking the candidate that he or she prefers as
21 number one and ranking the other candidates on the ballot in his or
22 her order of preference and, if the voter chooses to write in the
23 name of his or her choice for President in the blank space provided
24 upon the ballot for such purpose, by ranking the candidate written in
25 on the blank space as number one and ranking the other candidates on

1 the ballot in his or her order of preference.

2 Sec. 4. Section 32-801, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 32-801 At least fifty days before any statewide primary
5 or general election, the Secretary of State shall transmit in ballot
6 form to each election commissioner or county clerk a certification of
7 the candidates, offices, and issues that appear on the state ballot.
8 The certification prior to the primary election shall name the office
9 to be filled, the length of the term, the number of candidates to be
10 ~~voted for,~~ nominated, the name of each candidate for whom candidate
11 filing forms or petitions have been filed in the office of the
12 Secretary of State and who is entitled to be voted for at such
13 primary election, and the party affiliation or nonpartisan status of
14 each candidate. A separate statement of the city or village of
15 residence of each candidate shall be included with the certification,
16 but the city or village of residence shall not appear on the official
17 ballot. The certification prior to the general election shall name
18 the office to be filled, the length of the term, the number of
19 candidates to be voted for, the name of each candidate who was
20 nominated at the primary election or who filed by petition as shown
21 by the records in the office of the Secretary of State and who is
22 entitled to be voted for at the general election, and the party
23 affiliation or nonpartisan status of each candidate for partisan
24 offices.

25 Sec. 5. Section 32-816, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 32-816 (1)(a) A blank space shall be provided at the end
3 of each office division on the ballot for registered voters to fill
4 in the name of any person for whom they wish to vote and whose name
5 is not printed upon the ballot, except that at the primary election
6 there shall be no write-in space for delegates to the county
7 political party convention or delegates to the national political
8 party convention.

9 (b) At the primary election, ovals shall be printed next
10 to the write-in space similar to the ovals printed next to the name
11 of other candidates on the ballot. The voter shall rank the write-in
12 candidate as number one to indicate his or her vote for that
13 candidate.

14 ~~A~~(c) At the general election, a square or oval shall be
15 printed opposite each write-in space similar to the square or oval
16 placed opposite other candidates and issues on the ballot. The square
17 or oval shall be marked to vote for a write-in candidate whose name
18 appears in the write-in space provided.

19 (2) The Secretary of State shall approve write-in space
20 for optical-scan ballots and electronic voting systems. Adequate
21 provision shall be made for write-in votes sufficient to allow one
22 write-in space for each office to be elected at any election except
23 offices for which write-in votes are specifically prohibited. The
24 write-in ballot shall clearly identify the office for which such
25 write-in vote is cast. The write-in space shall be a part of the

1 official ballot, may be on the envelope or a separate piece of paper
2 from the printed portion of the ballot, and shall allow the voter
3 adequate space to fill in the name of the candidate for whom he or
4 she desires to cast his or her ballot.

5 Sec. 6. Section 32-817, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-817 (1) The names of the candidates shall be set in
8 boldface type using capital and lowercase letters.

9 (2) At a primary election, ovals shall be printed next to
10 the name of each candidate with numbers in each oval allowing the
11 voter to rank each candidate for each nomination for office. The oval
12 closest to the name of the candidate shall contain the numeral one.
13 If there is a write-in line provided for the office, the number of
14 ovals shall be the number of candidates for the nomination plus one.
15 If there is no write-in line, the number of ovals shall be the number
16 of candidates for the nomination.

17 ~~A~~(3) At the general election, a square or oval shall be
18 printed opposite the name of each candidate. At the general election,
19 the name of the party represented by a candidate for partisan office
20 shall be printed in capital and lowercase letters next to the name.

21 (4) Proposals submitted by initiative or referendum or
22 for constitutional amendments shall be printed in capital and
23 lowercase letters, but the title heading and number thereof shall be
24 in boldface type, and the square or oval for voting thereon shall be
25 printed opposite the text so that it is clear for which issue the

1 voter is casting a vote.

2 (5) Ballots shall be printed with substantially the same
3 appearance, including type and form, as the sample ballot furnished
4 by the Secretary of State.

5 Sec. 7. Section 32-901, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-901 (1)(a) At a primary election, the voters shall
8 vote by ranking their preferences for the candidates listed on the
9 ballot and for write-in candidates if they choose to write in a
10 candidate's name when permitted.

11 (b) To vote for a candidate using a paper ballot that is
12 to be manually counted, the registered voter shall make a cross or
13 other clear, discernable mark in oval number one next to the name of
14 the candidate, including write-in candidates, and shall make a cross
15 or other clear, discernable mark in the ovals next to the name of
16 every other candidate in the order of his or her preference. In the
17 case of a ballot question, the voter shall make a cross or other
18 clear, discernable mark in the square opposite the answer he or she
19 wishes to give. Making a cross or other clear, discernable mark in
20 the square or oval constitutes a valid vote.

21 (c) To vote for a candidate using a ballot that is to be
22 counted by optical scanner, the registered voter shall fill in oval
23 number one next to the name of the candidate, including write-in
24 candidates, and shall fill in the ovals next to the name of every
25 other candidate in the order of his or her preference. In the case of

1 a ballot question, the voter shall fill in the oval opposite the
2 answer he or she wishes to give. A mark in the oval that is
3 discernable by the scanner constitutes a valid vote.

4 (d) To vote for a candidate using an electronic voting
5 system, the registered voter shall follow the instructions for using
6 the electronic voting system to cause a mark to be recorded for every
7 candidate, including write-in candidates, in the order of his or her
8 preference. In the case of a ballot question, the voter shall follow
9 the instructions for using the electronic voting system to cause a
10 mark to be recorded opposite the ballot question response for which
11 the voter wishes to vote. Causing such mark to be recorded
12 constitutes a valid vote.

13 ~~(1)~~(2) At a general election:

14 (a) To vote for a candidate or on a ballot question using
15 a paper ballot that is to be manually counted, the registered voter
16 shall make a cross or other clear, discernable mark in the square
17 opposite the name of every candidate, including write-in candidates,
18 for whom he or she desires to vote and, in the case of a ballot
19 question, opposite the answer he or she wishes to give. Making a
20 cross or other clear, discernable mark in the square constitutes a
21 valid vote; -

22 ~~(2)~~(b) To vote for a candidate or on a ballot question
23 using a ballot that is to be counted by optical scanner, the
24 registered voter shall fill in the oval or other space provided
25 opposite the name of every candidate, including write-in candidates,

1 for whom he or she desires to vote and, in the case of a ballot
2 question, opposite the answer he or she wishes to give. A mark in the
3 oval or provided space that is discernable by the scanner constitutes
4 a valid vote; and -

5 ~~(3)-(c)~~ To vote for a candidate or on a ballot question
6 using an electronic voting system, the registered voter shall follow
7 the instructions for using the electronic voting system to cause a
8 mark to be recorded opposite the candidate or ballot question
9 response for which the voter wishes to vote. Causing such mark to be
10 recorded constitutes a valid vote.

11 Sec. 8. Section 32-1003, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 32-1003 All valid votes shall be counted. No ballot shall
14 be rejected because the voter did not vote for every possible office
15 or position or rank every candidate.

16 Sec. 9. At every primary election, the counting board
17 shall determine if a candidate has received more than one-half of the
18 votes cast for the nomination. If a candidate has received more than
19 one-half of the votes cast for the nomination, such candidate shall
20 be the nominee and be placed on the ballot at the general election.
21 If no candidate has received more than one-half of the votes cast for
22 the nomination, the ballots cast for the candidate for the nomination
23 who had the fewest votes shall be counted for the candidate ranked
24 second on such ballots. If a candidate has received more than one-
25 half of the votes cast for the nomination, such candidate shall be

1 the nominee and be placed on the ballot at the general election. If,
2 after redistributing the votes of the candidate who had the fewest
3 votes to the other candidates, no candidate has received more than
4 one-half of the votes cast for the nomination, the ballots cast for
5 the candidate for the nomination who had the next to fewest votes
6 shall be counted for the candidate ranked third on such ballot. This
7 procedure shall continue until one candidate has more than one-half
8 of the votes cast for the nomination and is declared the nominee.

9 Sec. 10. Section 32-1005, Revised Statutes Supplement,
10 2013, is amended to read:

11 32-1005 If the last name or a reasonably close spelling
12 of the last name of a person engaged in or pursuing a write-in
13 campaign pursuant to section 32-615 or 32-633 is written or printed
14 on a line provided for that purpose and the square or oval opposite
15 or ovals next to such line ~~has~~ ~~have~~ been marked with a ~~cross~~ ~~or~~ other
16 clear, intelligible mark, the vote shall be valid and the ballot
17 shall be counted. Except as provided in section 32-1007, a write-in
18 vote for a person who is not engaged in or pursuing a write-in
19 campaign pursuant to section 32-615 or 32-633 shall not be counted.

20 Sec. 11. Section 32-1007, Revised Statutes Supplement,
21 2013, is amended to read:

22 32-1007 For members of a village board of trustees,
23 township officers, or members of the school board of Class I or II
24 school districts, if a first or generally recognized name and last
25 name of a person is filled in on a line provided for that purpose and

1 the square or oval opposite or ovals next to such line ~~has~~have been
2 marked with a cross or other clear, intelligible mark, the vote shall
3 be valid and the ballot shall be counted. If only the last name of a
4 person is in the write-in space on the ballot and there is more than
5 one person in the county having the same last name, the counting
6 board shall reject the ballot for that office unless the last name is
7 reasonably close to the proper spelling of the last name of a
8 candidate engaged in or pursuing a write-in campaign pursuant to
9 section 32-615. The counting board shall make the following notation
10 on the rejected ballot: Rejected for the office of, no
11 first or generally recognized name.

12 Sec. 12. Section 32-1119, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 32-1119 (1) If it appears as evidenced by the abstract of
15 votes that any candidate failed to be ~~nominated~~~~or~~ elected by a
16 margin of (a) one percent or less of the votes received by the
17 candidate who received the highest number of votes for the office at
18 an election in which more than five hundred total votes were cast or
19 (b) two percent or less of the votes received by the candidate who
20 received the highest number of votes for the office at an election in
21 which five hundred or less total votes were cast, then such candidate
22 shall be entitled to a recount. Any losing candidate may waive his or
23 her right to a recount by filing a written statement with the
24 Secretary of State, election commissioner, or county clerk with whom
25 he or she made his or her filing. All expenses of a recount under

1 this section shall be paid by those political subdivisions involved
2 in the recount.

3 (2) Recounts shall be made by the county canvassing board
4 which officiated in making the official county canvass of the
5 election returns. If any member of the county canvassing board cannot
6 participate in the recount, another person shall be appointed by the
7 election commissioner or county clerk to take the member's place.

8 (3) Recounts for candidates who filed with the Secretary
9 of State shall be made on the fifth Wednesday after the election and
10 shall commence at 9 a.m. The Secretary of State shall inform each
11 election commissioner or county clerk of the names of the candidates
12 for which the board of state canvassers deems a recount to be
13 necessary.

14 (4) The election commissioner or county clerk shall be
15 responsible for recounting the ballots for those candidates for whom
16 the county canvassing board deems a recount to be necessary. The
17 recount shall be made as soon as possible after the adjournment of
18 the county canvassing board, except that if a recount is required
19 under subsection (3) of this section, the recounts may be conducted
20 concurrently.

21 (5) The Secretary of State, election commissioner, or
22 county clerk shall notify all candidates whose ballots will be
23 recounted of the time, date, and place of the recount. Candidates
24 whose ballots will be recounted may be present or be represented by
25 an agent appointed by the candidate.

1 (6) The procedures for the recounting of ballots shall be
2 the same as those used for the counting of ballots on election day.
3 The recount shall be conducted at the county courthouse, except that
4 if vote counting devices are used for the counting or recounting,
5 such counting or recounting may be accomplished at the site of the
6 devices. Counties counting ballots by using a vote counting device
7 shall first recount the ballots by use of the device. If substantial
8 changes are found, the ballots shall then be counted using such
9 device in any precinct which might reflect a substantial change.

10 Sec. 13. Section 32-1120, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 32-1120 After the recount under section 32-1119 has been
13 certified, the election commissioner or county clerk shall make a
14 certificate of election ~~or a certificate of nomination in the case of~~
15 ~~a primary election~~ for the person having the highest number of votes
16 for the office covered by the recount and cause the certificate to be
17 delivered to the person entitled to the certificate.

18 Sec. 14. Section 32-1122, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 32-1122 ~~(1) If a recount after a primary election results~~
21 ~~in any two or more persons having an equal and the highest number of~~
22 ~~votes for the same nomination for the same county, city, village, or~~
23 ~~school district office, the county canvassing board shall, in the~~
24 ~~presence of the candidates or their representatives, determine by lot~~
25 ~~which of the candidates shall be nominated. The election commissioner~~

1 ~~or county clerk shall notify such candidates by certified mail to~~
2 ~~appear at his or her office on a given day and hour to determine the~~
3 ~~same before the county canvassing board. The election commissioner or~~
4 ~~county clerk shall make a certificate of nomination for the person so~~
5 ~~nominated and shall cause such certificate to be delivered to the~~
6 ~~person entitled thereto.~~

7 ~~(2)~~(1) If a recount after a general or special election
8 results in any two or more persons having an equal and the highest
9 number of votes for the same county, city, village, or school
10 district office, the county canvassing board shall, in the presence
11 of the candidates or their representatives, determine by lot which of
12 the candidates shall be elected. The election commissioner or county
13 clerk shall notify such candidates by certified mail to appear at his
14 or her office on a given day and hour to determine the same before
15 the county canvassing board. The election commissioner or county
16 clerk shall make a certificate of election for the person so elected
17 and shall cause such certificate to be delivered to the person
18 entitled thereto.

19 ~~(3)~~ If a recount after a primary election results in any
20 two or more persons having an equal and the highest number of votes
21 for nomination to an office canvassed by the board of state
22 canvassers, the board shall decide by lot which of such persons is
23 nominated.

24 ~~(4)~~(2) If a recount after a general or special election
25 results in any two or more persons having an equal and the highest

1 number of votes for the office of the Governor, Secretary of State,
2 Auditor of Public Accounts, State Treasurer, Attorney General, or
3 other officer elected to an executive department, the Legislature
4 shall choose one of such persons for the office. If the office
5 involved in the recount is the office of the Governor, the Lieutenant
6 Governor shall be the candidate for Lieutenant Governor chosen by the
7 person selected by the Legislature as Governor.

8 ~~(5)~~(3) If a recount after a general or special election
9 results in any two or more persons having an equal and the highest
10 number of votes for an office canvassed by the board of state
11 canvassers, the board shall decide by lot which of such persons is
12 elected, except officers elected to the executive department.

13 Sec. 15. Section 49-220, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 49-220 If in any legislative district, the number of
16 persons nominated by nominating petitions exceeds four to be elected
17 delegates to the constitutional convention from such district, then a
18 nonpartisan primary shall be held in such district on the third
19 Tuesday after the first Monday in September before the special
20 election for such candidates. At such primary the four persons
21 receiving the greatest number of votes shall be chosen from those
22 nominated by nominating petitions. Those so chosen shall be deemed
23 nominated for delegates, and their names only shall appear on the
24 ballot at the special election. At such primary election each elector
25 shall be entitled to vote for two candidates by ranking two

1 candidates as number one. No party or political designation shall
2 appear on the ballots, either at the primary or special election
3 provided for by sections 49-212 to 49-234.

4 Sec. 16. Original sections 32-701, 32-801, 32-817,
5 32-901, 32-1003, 32-1119, 32-1120, 32-1122, and 49-220, Reissue
6 Revised Statutes of Nebraska, sections 32-546.01 and 32-816, Revised
7 Statutes Cumulative Supplement, 2012, and sections 32-101, 32-1005,
8 and 32-1007, Revised Statutes Supplement, 2013, are repealed.