

LEGISLATIVE BILL 561

Approved by the Governor May 13, 2015

Introduced by Stinner, 48; Schilz, 47.

A BILL FOR AN ACT relating to irrigation districts; to amend sections 46-101, 46-102, 46-109, 46-110, 46-111, 46-115, 46-116, 46-117, 46-151, 46-179, 46-185, 46-1,145, and 46-1,160, Reissue Revised Statutes of Nebraska; to name the Irrigation District Act; to define and redefine terms; to provide procedures for determining eligibility to vote and for conducting elections by mail; to change provisions relating to elections; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 46-101, Reissue Revised Statutes of Nebraska, is amended to read:

46-101 (1) Sections 46-101 to 46-1,163 shall be known and may be cited as the Irrigation District Act.

(2) Whenever a majority of the electors owning land or holding leasehold estates, or who are entrymen of government lands, in the manner and to the extent hereinafter provided in the Irrigation District Act, in any district susceptible to one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the act provisions of sections 46-101 to 46-128, and when so organized, each district shall have the power conferred by law upon such irrigation district.

Sec. 2. Section 46-102, Reissue Revised Statutes of Nebraska, is amended to read:

46-102 (1) For purposes of the Irrigation District Act:

(a) Elector means The term elector as used in sections 46-101 to 46-1,111 shall include any resident of the State of Nebraska, owning not less than fifteen acres of land, or who is an entryman of government land, within any irrigation district or proposed irrigation district, or any resident of the State of Nebraska holding a leasehold estate in not less than forty acres of state land within such irrigation district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and Provided, however, when

(b) Residence means (i) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or (ii) the place where a person has his or her family domiciled even if he or she does business in another place.

(2) If an elector resides outside of the irrigation district, the elector shall be considered an elector in the division of the irrigation district in which his or her land is situated or, if the elector is the owner of land in more than one division of the irrigation district, the elector and resides without the district, he shall be considered an elector in the that division of the district in which the majority of his or her land is situated.

(3) In the case of land owned or leased by joint tenants, each joint tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(4) In the case of land owned or leased by tenants in common, each tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(5) In the case of land owned or leased by a corporation, limited liability company, limited liability partnership, joint venture, or other legal entity which meets the minimum acreage requirements of subsection (1) of this section, the entity shall designate a shareholder, member, or partner of the entity who is a resident of the State of Nebraska to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the board of directors of the irrigation district not less than thirty days prior to an irrigation district election.

(6) In the case of land owned or leased under a life tenancy, each remainderman who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(7) In the case of land held by a buyer in possession pursuant to a land-purchase contract when the total acreage under the land-purchase contract meets the minimum acreage requirements of subsection (1) of this section and the buyer in possession is a resident of the State of Nebraska and is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(8) In the case of land owned or leased by a trust which meets the minimum acreage requirements of subsection (1) of this section, the trustee shall designate a trustor, beneficiary, or trustee of the trust who is a resident of the State of Nebraska to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

(9) In the case of a pending estate of a deceased elector involving land which meets the minimum acreage requirements of subsection (1) of this section, the duly appointed personal representative of the estate who is a resident of the State of Nebraska shall act as the elector on behalf of the estate.

(10) Prior to formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage, the election commissioner or county clerk shall determine the party entitled to vote. In such cases, the determination of the election commissioner or county clerk shall be conclusive. After formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage or any other conflict arises regarding the qualification of an elector, the secretary of the board of directors of the irrigation district shall determine the party entitled to vote. The secretary's determination shall be conclusive. If a claim involves the secretary of the board, the board of election for the affected irrigation district precinct shall determine the party entitled to vote. In such cases, the determination of the board of election shall be conclusive.

Sec. 3. Section 46-109, Reissue Revised Statutes of Nebraska, is amended to read:

46-109 (1) Except as otherwise provided in subsections (2) and (3) of this section, the county board shall also make an order dividing the irrigation district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall be elected for each division. ; Provided, that

(2) After formation of an irrigation district, in districts comprising over twenty-five thousand acres, the electors thereof may determine by a majority vote to increase the number of directors in any multiple of three up to nine, whereupon the district may be divided into as many divisions as there are directors agreed upon. One-third of the number of directors so elected shall retire each year, and the order of their retirement may be agreed upon by the directors of the district, and successors shall be elected in the manner provided for the election of directors in other districts. The election for the increased number of directors shall be called upon a petition signed by twenty percent of the electors of the district presented to the then board of directors.

(3) After formation of an irrigation district, in districts comprising less than fifteen thousand acres, upon the majority vote of the board of directors, the question of whether the divisions in the irrigation district may be eliminated and the subsequent election of the directors conducted on an at-large basis may be submitted to the electors. The divisions in the district shall be eliminated and the directors elected on an at-large basis only upon the affirmative vote of two-thirds of the electors of the district.

Sec. 4. Section 46-110, Reissue Revised Statutes of Nebraska, is amended to read:

46-110 (1) After dividing the proposed irrigation district into divisions, the county board shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the Irrigation District Act provisions of sections 46-101 to 46-128. Such notice shall describe the boundaries as established and shall designate a name for such proposed district. The notice shall be published for at least three weeks prior to such election in a newspaper of general circulation in the county; and if any portion of such proposed district lies within another county or counties, then the notice shall be published in a newspaper of general circulation published within each of such counties. The notice shall include the contents of the ballots to be cast and the date, time, place, and manner of the election, with instructions and deadlines to request and cast a ballot by mail. The ballot require the electors to cast ballots which shall contain the words Irrigation district Yes, or Irrigation district No, or words equivalent thereto; and also the names of persons to be voted for to fill various elective offices hereinafter prescribed in the Irrigation District Act.

(2) No person shall be entitled to vote at any election held under the Irrigation District Act unless he or she is qualified as an provisions of sections 46-101 to 46-111 unless he shall be a qualified elector as provided in section 46-102. For any election under the Irrigation District Act, status as an elector shall be established by a record date designated by the election commissioner or county clerk for initial organization of the irrigation district or designated by the secretary of the board of directors for all other elections. The record date shall not be more than thirty days prior to the election. After such record date, a person may be allowed to vote when such person establishes his or her status as an elector to the satisfaction of the election commissioner or county clerk for initial organization of the district or to the satisfaction of the secretary of the board of directors for all other elections. The determination of the election commissioner, county clerk, or secretary of the board of directors, as the case may be, shall be conclusive.

Sec. 5. Section 46-111, Reissue Revised Statutes of Nebraska, is amended to read:

46-111 (1) Irrigation district elections shall be conducted in accordance

with the Irrigation District Act.

~~(2) Such election shall be conducted in accordance with the general election laws of the state, including all provisions of law authorizing voting by mail. The county board shall meet on the second Monday next succeeding any irrigation district such election or next succeeding the deadline for casting ballots in an irrigation district election by mail and canvass the votes cast at the election or by mail. If thereat; and if upon such canvass of the election for the formation of the district it appears that at least a majority of all votes cast are Irrigation district Yes, the county board shall by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style therefor designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. The county board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county register of deeds of each county in which any portion of such lands are situated, and shall must also immediately forward a copy thereof to the clerk of the county board of each of the counties in which any portion of the district may lie; and no county board of any county, including any portion of such district, shall, after the date of the organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purpose of the election above provided for the formation of the district, the county board shall establish one or more election precincts in the proposed district, and define the boundary or boundaries thereof, which may thereafter be changed by the board of directors of such district.~~

Sec. 6. Section 46-115, Reissue Revised Statutes of Nebraska, is amended to read:

46-115 (1) Fifteen days before any election which is not held by mail under the Irrigation District Act provisions of sections 46-101 to 46-111, subsequent to the organization of the irrigation district, the secretary of the board of directors shall cause notice to be published in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include the date, time, place, and manner posted in three public places in each election precinct, of the time and place of holding the election. The secretary, and shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places, if any, of each precinct of the irrigation district.

(2) Each year the board of directors of an irrigation district shall determine whether to hold the subsequent regular election of the irrigation district by mail. The board of directors may determine to hold any other election by mail under the Irrigation District Act if the decision to hold the election by mail is made at least forty-five days prior to the date set for such election. The secretary of the board of directors shall, at least thirty days prior to the date set for the election, mail to the last-known post office address of each elector a ballot which lists the names of the candidates and gives instructions and the deadlines to return the ballot. The secretary shall publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include instructions and the deadlines for requesting a ballot and instructions and the deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.

(3) Prior to the time for posting the notices, the board of directors shall appoint three residents must appoint from each precinct, from the electors thereof, one clerk and two judges, who shall constitute a board of election for such precinct. If the board of directors fails to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election or at the time and place for processing and counting the ballots cast by mail, as the case may be, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held or the time and place for processing and counting the ballots cast by mail, as the case may be. All provisions of law authorizing voting by mail shall apply to all irrigation district elections.

Sec. 7. Section 46-116, Reissue Revised Statutes of Nebraska, is amended to read:

46-116 (1) One of the judges shall be chairperson chairman of the election board of election and may (a 1) administer all oaths required in the progress of an election under the Irrigation District Act, and (b 2) appoint judges and clerks, if during the progress of the election or processing and counting ballots cast by mail, as the case may be, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election or the processing and counting of ballots cast by mail, as the case may be. Before opening the polls or processing and counting ballots cast by mail, each member of the board of election must take and subscribe to an oath to faithfully perform the duties imposed upon him or her by law. Any elector of

the precinct may administer and certify such oath.—The

(2) For elections other than those conducted by mail, the polls must be opened at 8 a.m. on the morning of the election and be kept open until 6 p.m. of the same day, ~~except that~~ ; ~~Provided~~, in districts embracing twelve thousand acres or less, the polls may, by direction of the board of directors, be opened at 1 p.m. and be kept open until 5:30 p.m. of the same day.

Sec. 8. Section 46-117, Reissue Revised Statutes of Nebraska, is amended to read:

46-117 (1) Elections under the Irrigation District Act, together with the ballots cast thereat, shall be certified by the boards of election for the precincts to the board of directors of the irrigation district within three days after the election or the deadline for casting ballots by mail.

(2) No lists, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were opened or ballots were mailed have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

Sec. 9. Section 46-151, Reissue Revised Statutes of Nebraska, is amended to read:

46-151 The cost and expense of purchasing and acquiring property and constructing the works and improvements ~~herein~~ provided for in the Irrigation District Act shall be wholly paid out of the construction fund, or in the bonds of the irrigation such district at their par value, after having first advertised the same for sale as provided in section 46-1,100, and having received no bids therefor of ninety-five percent or upwards of their face value. In case such bonds or the money raised by their sale is insufficient for the purposes for which the bonds were issued, additional bonds may be issued, after submission of the question at a general or special election to the electors ~~qualified voters~~ of the district. In case of the issuance of additional bonds, the lien for taxes for the payment of the interest and principal of such issue shall be a subsequent lien to any prior bond issue. However, the provisions of this section shall not apply where the cost and expense of purchasing and acquiring property and constructing the works and improvements ~~herein~~ provided for in the Irrigation District Act are covered by contract between the district and the United States. In lieu of the issuance of additional bonds, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor in the same manner in which levy of an assessment is made for the other purposes provided in the Irrigation District Act ~~sections 46-101 to 46-1,111.~~

Sec. 10. Section 46-179, Reissue Revised Statutes of Nebraska, is amended to read:

46-179 If the assent ~~aforsaid~~ of the holders of the bonds is filed and entered of record as provided in section 46-178 ~~aforsaid~~, and if there are objections presented by any person showing cause ~~as aforsaid~~ which have not been withdrawn, then the board of directors may order an election to be held in the irrigation district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper of general circulation ~~published~~ within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper of general circulation ~~published~~ in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words For exclusion, or Against exclusion, or words equivalent thereto. Such election shall otherwise be conducted in accordance with sections 46-115 to 46-118 ~~the general election laws of the state~~; ~~Provided, no particular form of ballot shall be required.~~

Sec. 11. Section 46-185, Reissue Revised Statutes of Nebraska, is amended to read:

46-185 Whenever a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, ~~shall~~ petition the board of directors to call a special election, for the purpose of submitting to the qualified electors of such irrigation district a proposition to vote on the discontinuance of such irrigation district and a settlement of its bonded and other indebtedness, ~~it shall be the duty of the board of directors shall~~ ~~to~~ call an election, setting forth the object of the same, and ~~to~~ cause a notice of such election to be published in some newspaper of general circulation in each of the counties in which the district is located, ~~and in which a newspaper is published~~, for a period of thirty days prior to such election, setting forth the time and place for holding such election in each of the voting precincts in the district, ~~and~~ and shall also cause a written or printed notice of such election to be posted in some conspicuous place in each of the voting precincts. The board of ~~It shall also be the duty of the directors shall~~ ~~to~~ provide ballots to be used at such election, on which shall be written or printed the words For

discontinuance Yes, and For discontinuance No. ~~The election shall otherwise be conducted in accordance with sections 46-115 to 46-118. The ballots shall be placed in the hands of the proper election officers in the several voting precincts of such district prior to the opening of the polls on the day of such election; and the election shall be conducted in all respects in the same manner as provided by law for the election of officers of the district. The return of the election, together with the ballots cast thereat, shall be certified by the several election boards of such district to the board of directors within three days from and after the election, which board shall, on or before the third day after the election, canvass such returns and declare the result of such election, which result shall be at once recorded in the records of the district board.~~

Sec. 12. Section 46-1,145, Reissue Revised Statutes of Nebraska, is amended to read:

46-1,145 If such contract provides for payments to be made extending for a period of more than one year from the date of making the contract, the board of directors of such irrigation district shall submit the contract to the electors ~~legal voters~~ of the district at any general election, or at a special election called therefor for the approval or disapproval of the contract. ~~If a special election is called for such purpose the notice of election, conduct of the election and canvass of votes shall so far as practicable be the same as elections held for the purpose of voting upon the issuance of bonds. The ballots at the election shall have printed thereon For approval of contract for water supply, and Against approval of contract for water supply. The notice of the election need not give the entire contract but shall be sufficient if it states shall state in a general way the substance of the proposed contract. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118.~~ If a majority of the electors ~~voters~~ that vote on the proposition vote for approval of the contract, the board of directors shall enter into the contract and shall thereafter, at the time the other taxes of the district are levied, levy a tax on the taxable property of the district sufficient to pay the amount due and to become due on the contract before the next annual levy in the district.

Sec. 13. Section 46-1,160, Reissue Revised Statutes of Nebraska, is amended to read:

46-1,160 ~~The board of It shall be the duty of the directors of the irrigation districts to be merged shall to provide ballots to be used at such election. The ballots shall be placed in the hands of the public election officers in the several voting precincts of each district prior to the opening of the polls on the day of such election, and the election shall be conducted in all respects in the same manner as provided by law for the election of directors of the districts. The return of the election, together with the ballots cast thereat, shall be certified by the election boards of election of such districts to the persons who will serve as the board of directors of the merged district if the merger is approved, within three days after the election or within three days after the deadline to submit ballots by mail, as the case may be, which board shall, on or before the third day after the election, canvass such returns and declare the result of such election, which result shall be at once recorded by the secretary of the board of directors in the records of the district boards and certified to the county clerk. The election and the return thereof shall otherwise be conducted in accordance with sections 46-115 to 46-118.~~

Sec. 14. This act becomes operative on January 1, 2016.

Sec. 15. Original sections 46-101, 46-102, 46-109, 46-110, 46-111, 46-115, 46-116, 46-117, 46-151, 46-179, 46-185, 46-1,145, and 46-1,160, Reissue Revised Statutes of Nebraska, are repealed.