

## LEGISLATIVE BILL 874

Approved by the Governor April 13, 2016

Introduced by Murante, 49.

A BILL FOR AN ACT relating to the Election Act; to amend sections 32-1524 and 32-1527, Reissue Revised Statutes of Nebraska, sections 32-570, 32-618, and 32-949.01, Revised Statutes Cumulative Supplement, 2014, and sections 32-941, 32-947, and 32-953, Revised Statutes Supplement, 2015; to change procedures for filling vacancies on school boards, requirements for certain petition candidates, deadlines for ballots for early voting and special elections by mail, and prohibitions related to yard signs; to allow a voter to photograph and reveal a marked ballot as prescribed; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 32-570, Revised Statutes Cumulative Supplement, 2014, is amended to read:

32-570 (1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) A person appointed to fill a vacancy on the school board of a Class I school district by the remaining members of the board shall hold office until the beginning of the next school year. A board member of a Class I school district elected to fill a vacancy at a regular or special school district meeting shall serve for the remainder of the unexpired term or until a successor is elected and qualified.

(3) Except as provided in subsection (4) of this section, a vacancy in the membership of a school board of a Class II, III, IV, V, or VI school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board. ~~If the vacancy occurs in a Class II school district prior to July 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is elected at such general election for the remainder of the unexpired term. If the vacancy occurs in a Class III, IV, or VI school district prior to February 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. If the vacancy occurs on or after the applicable deadline, the appointment shall be for the remainder of the unexpired term. A registered voter appointed or elected pursuant to this subsection shall meet the same requirements as the member whose office is vacant.~~

(4) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board. ~~If the vacancy occurs at least twenty days prior to the first regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the first regular caucus and at least twenty days prior to the second regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the second regular caucus held during the term that was vacated or after such caucus, the appointment shall be for the remainder of the unexpired term.~~

~~(5) A vacancy in the membership of a school board of a Class V school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.~~

~~(5 6) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections~~

or school district meetings.

(6 7) If there are vacancies in the offices of one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Sec. 2. Section 32-618, Revised Statutes Cumulative Supplement, 2014, is amended to read:

32-618 (1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be at least ten percent of the registered voters entitled to vote for the office. as follows:

~~(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state; and~~

~~(b) For each partisan office to be filled by the registered voters of a county or political subdivision, at least twenty percent of the total vote for Governor or President of the United States at the immediately preceding general election within the county or political subdivision, not to exceed two thousand.~~

~~The number of signatures shall not be required to exceed one-fourth of the total number of registered voters voting for the office at the immediately preceding general election when the nomination is for a partisan office to be filled by the registered voters of a county.~~

Sec. 3. Section 32-941, Revised Statutes Supplement, 2015, is amended to read:

32-941 Any registered voter permitted to vote early pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than the close of business on the second Friday 4 p.m. on the Wednesday preceding the election, request a ballot for the election to be mailed to a specific address. A registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her home and shall indicate his or her residence address, the address to which the ballot is to be mailed if different, and his or her telephone number if available. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter shall sign the request. A registered voter may use a facsimile machine or electronic mail for the submission of a request for a ballot. The election commissioner or county clerk shall include a registration application with the ballots if the person is not registered. Registration applications shall not be mailed after the third Friday preceding the election. If the person is not registered to vote, the registration application shall be returned not later than the closing of the polls on the day of the election. No ballot issued under this section shall be counted unless such registration application is properly completed and processed.

Sec. 4. Section 32-947, Revised Statutes Supplement, 2015, is amended to read:

32-947 (1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received not later than the close of business on the second Friday at or before 4 p.m. on the Wednesday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of

election falsification that:

- (a) I, ....., am a registered voter in ..... County;
- (b) I reside in the State of Nebraska at .....
- (c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and
- (d) 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 ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature .....

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

Sec. 5. Section 32-949.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

32-949.01 If a ballot for early voting is destroyed, spoiled, lost, or not received by the registered voter, the voter may cast a provisional ballot pursuant to section 32-915 at the voter's polling place on election day or 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 original ballot for early voting was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk. To receive a replacement ballot in person, the voter shall return the statement to the office of the election commissioner or county clerk by 8 p.m. on the day of the election. To receive a replacement ballot by mail, the voter shall return the statement to such office prior to the close of business on the second Friday preceding ~~fourth business day~~ before 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. 6. Section 32-953, Revised Statutes Supplement, 2015, is amended to read:

32-953 (1) Except as otherwise provided in subsection (2) of this section, the election commissioner or county clerk shall mail the official ballot to all registered voters of the political subdivision or the district or ward 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 twenty-second ~~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 an unsealed identification envelope meeting the requirements of subsection (2) of section 32-947 and instructions sufficient to describe the voting process.

(2) The election commissioner or county clerk may choose not to mail a ballot to all registered voters who have been sent a notice pursuant to section 32-329 and failed to respond to the notice. If the election commissioner or county clerk chooses not to mail a ballot to such voters, he or she shall mail

a notice to all such registered voters explaining how to obtain a ballot and stating the applicable deadlines.

Sec. 7. Section 32-1524, Reissue Revised Statutes of Nebraska, is amended to read:

32-1524 (1) No judge or clerk of election or precinct or district inspector shall do any electioneering while acting as an election official.

(2) No person shall do any electioneering, circulate petitions, or perform any action that involves solicitation within any polling place or any building designated for voters to cast ballots by the election commissioner or county clerk pursuant to the Election Act while the polling place or building is set up for voters to cast ballots or within two hundred feet of any such polling place or building except as otherwise provided in subsection (3) of this section.

(3) Subject to any local ordinance, a person may display yard signs on private property within two hundred feet of a polling place or building designated for voters to cast ballots if the property is not under common ownership with the property on which the polling place or building is located.

(4) Any person violating this section shall be guilty of a Class V misdemeanor.

Sec. 8. Section 32-1527, Reissue Revised Statutes of Nebraska, is amended to read:

32-1527 (1) No voter shall receive an official ballot from any person other than a judge of election, and no person other than a judge of election shall deliver an official ballot to a voter.

(2) No voter shall vote or offer to vote any ballot except an official ballot received from a judge of election.

(3) No voter shall place any mark upon an official ballot by which it may afterwards be identified as the one voted by him or her.

(4) No person shall solicit a voter to show his or her ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of the candidate or candidates for whom he or she has marked his or her vote. This subsection does not prohibit a voter from voluntarily photographing his or her ballot after it is marked and revealing such photograph in a manner that allows the photograph to be viewed by another person, and no person shall solicit a voter to show the same.

(5) No person other than a judge of election shall receive from a voter an official ballot prepared for voting.

(6) Any person violating this section shall be guilty of a Class V misdemeanor.

Sec. 9. Sections 3, 4, 5, 6, and 10 of this act become operative on June 1, 2016. Sections 1, 2, 7, 8, and 11 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 10. Original section 32-949.01, Revised Statutes Cumulative Supplement, 2014, and sections 32-941, 32-947, and 32-953, Revised Statutes Supplement, 2015, are repealed.

Sec. 11. Original sections 32-1524 and 32-1527, Reissue Revised Statutes of Nebraska, and sections 32-570 and 32-618, Revised Statutes Cumulative Supplement, 2014, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.