

LEGISLATIVE BILL 935

Approved by the Governor April 17, 2002

Introduced by McDonald, 41; Schimek, 27

AN ACT relating to elections; to amend sections 10-703.01, 29-1401.02, 32-303, 32-552, 32-802, 32-819, 32-933, 32-941, 32-942, 32-943, 32-946, 32-950, 32-954, 32-956, and 79-552, Reissue Revised Statutes of Nebraska, and sections 29-1401 and 32-1027, Revised Statutes Supplement, 2000; to provide for review and adjustment of boundaries of school board election districts; to change and eliminate provisions relating to wages for election workers, petition procedures, registration of voters, notice of election, correcting errors on ballots, and absentee ballots; to harmonize provisions; to repeal the original sections; and to outright repeal sections 29-1401.01 and 32-1029, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 10-703.01, Reissue Revised Statutes of Nebraska, is amended to read:

10-703.01. In all special elections called for voting on the question of issuing bonds of the school district, the county clerk or election commissioner or, if the school district lies in more than one county, the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question shall designate the polling places and appoint the election officials, who need not be the regular election officials, and otherwise conduct the election as provided under the Election Act except as otherwise specifically provided in this section. No special election shall be held under this section within thirty days prior to the statewide primary or general election or sixty days after the statewide primary or general election. The school district shall designate the form of ballot and reimburse the county clerk or election official for the expenses of conducting the election as provided in sections 32-1201 to 32-1208. The school district officers shall give notice of the election at least twenty days prior to the election and cause the sample ballot to be published in a newspaper of general circulation in the school district one time not more than ten days nor less than three days prior to the election, and no notice of the election shall be required to be given by the county clerk or election commissioner. The notice of election shall state where absentee ballots may be obtained.

The ballots shall be counted by the county clerk or election commissioner conducting the election and two disinterested persons appointed by him or her. When the polls are closed, the receiving board shall deliver the ballots to the county clerk or election commissioner conducting the election who, with the two disinterested persons appointed by him or her, shall proceed to count the ballots.

Absentee ballots shall be furnished to the county clerk or election commissioner and ready for distribution by the county clerk or election commissioner conducting the election not less than fifteen days prior to the election.

When a school district lies in more than one county, the county clerk or election commissioner in any other county containing part of such school district shall, upon request, certify its registration books for those precincts in which the school district is located to the county clerk or election commissioner conducting the election and shall immediately forward all requests for absentee ballots to the county clerk or election commissioner charged with the issuing of such ballots. Not less than five days prior to the election, the school district officers shall certify to the county clerk or election commissioner conducting the election a list of all registered voters of the school district in any other county or counties qualified to vote on the bond issue.

Absentee ballots cast at the election shall be counted by the same board as counted other ballots at the election. When all the ballots have been counted, the returns of such election shall be turned over to the school board or board of education of the district in which the election was held for the purpose of making a canvass thereof.

The two disinterested persons appointed on the counting board shall receive four dollars and twenty-five cents per hour wages at the minimum rate set in section 48-1203 for each hour of service rendered.

Sec. 2. Section 29-1401, Revised Statutes Supplement, 2000, is

amended to read:

29-1401. (1) The district courts are hereby vested with power to call grand juries.

(2) A grand jury may be called and summoned in the manner provided by law on such day of a regular term of the district court in each year in each county of the state as the district court may direct and at such other times and upon such notice as the district court may deem necessary.

(3) District courts shall call a grand jury in each case that a petition meets the requirements of ~~sections 29-1401.01 and 29-1401.02~~ section 32-628, includes a recital as to the reason for requesting the convening of the grand jury and a specific reference to the statute or statutes which are alleged to have been violated, and is signed not more than ninety days prior to the date of filing under section 29-1401.02 by not less than ten percent of the registered voters of the county who cast votes for the office of Governor in such county at the most recent general election held for such office.

(4) District courts shall call a grand jury in each case upon certification by the county coroner or coroner's physician that a person has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. In each case subject to this subsection:

(a) Law enforcement personnel from the jurisdiction in which the death occurred shall immediately secure the scene, preserve all evidence, and investigate the matter as in any other homicide. The case shall be treated as an open, ongoing matter until all evidence, reports, and other relevant material which has been assembled are transferred to the special prosecutor appointed pursuant to subdivision (b) of this subsection;

(b) Except as provided in subdivision (d) of this subsection, as soon as practicable, the court shall appoint a special prosecutor who has had at least five years experience in criminal litigation, including felony litigation. The special prosecutor shall select a team of three peace officers, trained to investigate homicides, from jurisdictions outside the jurisdiction where the death occurred. The team shall examine all evidence concerning the cause of death and present the findings of its investigation to the special prosecutor;

(c) A grand jury shall be impaneled within thirty days after the certification by the county coroner or coroner's physician, unless the court extends such time period upon the showing of a compelling reason; and

(d) A special prosecutor need not be appointed in those cases in which the death has been certified by a licensed practicing physician to be from natural causes and that finding is presented to a grand jury.

Sec. 3. Section 29-1401.02, Reissue Revised Statutes of Nebraska, is amended to read:

29-1401.02. The procedure for calling a grand jury by petition of the registered voters of the county shall be as follows:

(1) The petitions shall be filed in the office of the clerk of the district court, ~~shall be in the form provided by law~~ comply with the requirements in section 29-1401, and be filed without a filing fee;

(2) Upon receipt of such petitions, the clerk of the district court shall forthwith certify the petitions so filed to the county clerk or election commissioner in the county ~~wherein~~ in which the signers of such petitions are registered to vote and shall request that the signatures on such petitions be validated according to the list of registered voters;

(3) The county clerk or election commissioner shall, within thirty days ~~from~~ after receipt of such petitions, determine the number of valid signatures appearing on such petitions and certify ~~his~~ the findings along with the total vote cast for Governor at the most recent election for such office in such county to the presiding judge of the district court in which ~~such~~ the petitions were filed;

(4) The presiding judge of the district court shall, upon receipt of the certificate from the county clerk or election commissioner, examine the petitions and within fifteen days ~~of~~ after the receipt thereof shall determine: (a) Whether the requisite number of valid signatures appear on such petitions; and (b) whether the formal requirements as to the form of the petition have been satisfied;

(5) The determination of sufficiency of the petitions by the presiding judge shall be based solely upon the certification of valid signatures by the county clerk or election commissioner and upon the presiding judge's personal examination of the form of the petitions. No additional evidence shall be considered by the presiding judge in making ~~his~~ the determination of sufficiency and under no circumstances shall any petitioner be required to testify or otherwise present evidence relating to allegations contained in ~~such~~ the petitions;

(6) Upon a determination that the requisite number of valid

signatures appeared on ~~such~~ the petitions and that the petitions otherwise were sufficient as to form, ~~it shall be mandatory for~~ the presiding judge ~~to~~ shall call a grand jury forthwith;

(7) ~~In the event that~~ If the presiding judge of the district court fails to make a determination as to the sufficiency of ~~such~~ the petitions and fails to call a grand jury within fifteen days ~~from~~ after the date of delivery of ~~such~~ the petitions to the presiding judge, the clerk of the district court shall immediately call a grand jury pursuant to law, notwithstanding the fact that the presiding judge of the district court failed to determine sufficiency of the petitions and did not call the grand jury; and

(8) ~~In the event that~~ If the presiding judge or clerk of the district court fails to call a grand jury, the petitioners may file an immediate request with the Chief Justice of the Supreme Court, or in his or her absence, with any judge thereof, and request that ~~such~~ the Chief Justice or judge review the petitions and certifications and call a grand jury. If the Chief Justice or judge of the Supreme Court determines sufficiency of the petitions according to law, ~~an order shall be issued by~~ the Chief Justice or judge ~~to~~ shall order the clerk of the district court to call a grand jury.

Sec. 4. Section 32-303, Reissue Revised Statutes of Nebraska, is amended to read:

32-303. In addition to his or her office, the election commissioner or county clerk ~~shall~~ may provide a place of registration in each incorporated city or village in the county and in each legislative district in cities of the metropolitan class. The place of registration ~~shall~~ may be open not less than one day within the thirty days prior to the statewide primary election and the statewide general election and at such times and during such hours as the election commissioner or county clerk may direct. ~~In lieu of this requirement,~~ An election commissioner or county clerk may establish a permanent place of registration in each incorporated city or village in the county or each legislative district in a city of the metropolitan class by training registered voters to act as deputy registrars. A private residence shall not be used as a permanent place of registration except in incorporated villages.

Sec. 5. Section 32-552, Reissue Revised Statutes of Nebraska, is amended to read:

32-552. (1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election districts shall provide written notification to the election commissioner or county clerk of the need and necessity of his or her office to perform such adjustments.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) The election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into twelve numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

Sec. 6. Section 32-802, Reissue Revised Statutes of Nebraska, is amended to read:

32-802. The notice of election for any election shall state the date on which the election is to be held and the hours the polls will be open and list all offices, candidates, and issues that will appear on the ballots. The notice of election shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. In the case of a primary election, the notice of election shall list all offices and candidates that are being forwarded to the general election. The notice of election shall only state that amendments or referendums will be voted upon and that the Secretary of State will publish a true copy of the title and text of any amendments or referendums once each week for three consecutive weeks preceding the election. Such notice of election shall

appear in at least one newspaper designated by the election commissioner, county clerk, city council, or village board no later than forty days prior to the election. The election commissioner or county clerk shall, not later than forty days prior to the election, (1) post in his or her office the same notice of election published in the newspaper ~~not later than forty days prior to the election and shall~~ and (2) provide a copy of the notice to ~~all candidates and the~~ political subdivisions appearing on the ballot. The election commissioner or county clerk shall correct the ballot to reflect any corrections received within ten days after mailing the notice as provided in section 32-819. The notice of election shall be posted in lieu of sample ballots until such time as sample ballots are printed. If joint elections are held in conjunction with the statewide primary or general election by a county, city, or village, only one notice of election need be published and signed by the election commissioner or county clerk.

Sec. 7. Section 32-819, Reissue Revised Statutes of Nebraska, is amended to read:

32-819. (1) Whenever it appears by affidavit that an error or omission has occurred in the name or description of a candidate nominated for office or in the printing of the sample or official ballots, the county or district judge sitting at chambers may by order, upon the application of any registered voter, require the election commissioner, county clerk, or city or village clerk to correct such error or to show cause why such error or omission should not be corrected.

(2) The election commissioner, county clerk, or city or village clerk shall, ~~upon his or her own motion~~, correct without delay any patent error in the ballots which he or she may discover or which is brought to his or her attention and which can be corrected without interfering with the timely distribution of the ballots.

(3) The election commissioner, county clerk, or city or village clerk shall not be required to correct any error on the ballot after the thirty-fifth day prior to the election except as otherwise ordered by the court.

Sec. 8. Section 32-933, Reissue Revised Statutes of Nebraska, is amended to read:

32-933. (1) Any person listed in this subsection shall be eligible as a new resident to vote for President and Vice President of the United States at the statewide general election but for no other offices:

(a) Any citizen of the United States who is at least the constitutionally prescribed age of a voter and who comes into Nebraska after the voter registration period is closed pursuant to section 32-302 for the purpose of making Nebraska his or her place of residence; and

(b) Any registered voter who moves from one county to another county within Nebraska after the close of the voter registration period.

(2) Any registered voter who moves from Nebraska to another state or to the District of Columbia for the purpose of making such new location his or her place of residence after the close of the voter registration period for such location shall be eligible as a former resident to vote for President and Vice President of the United States at the statewide general election but for no other offices.

(3) Any person described in subsection (1) of this section shall cast his or her ballot in the office of the election commissioner or county clerk at any time between the close of the voter registration period and the close of the polls on election day. Such ballots shall be available after the close of the voter registration period. Ballots for former residents under subsection (2) of this section shall be available thirty-five days prior to the election. The ballots and may be mailed to or voted in the office of the election commissioner or county clerk at any time between thirty-five days prior to the election and the close of the polls on election day, or the ballots may be mailed to the office and counted if they arrive before the close of the polls on election day.

Sec. 9. Section 32-941, Reissue Revised Statutes of Nebraska, is amended to read:

32-941. Any registered voter permitted to vote absentee pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than 4 p.m. on the ~~Friday~~ Wednesday preceding the election, request an absentee ballot for the election to be mailed to a specific address. A registered voter shall request an absentee 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 address, political party, telephone number if available, and precinct if known. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter or his or her

agent shall sign the request. A registered voter may use a facsimile machine for the submission of a request for an absentee ballot. The election commissioner or county clerk shall include registration forms with the ballots if the person is not registered. Registration forms shall not be issued or mailed after the second Friday preceding the election. If the person is not registered to vote, the registration forms shall be returned not later than the closing of the polls on the day of the election. ~~7 or if the registered voter chooses to return the registration forms by mail, the registration forms shall be received by the election office no later than 10 a.m. on the second day following the election.~~ No ballot issued under this section shall be counted unless such registration forms are properly completed and processed.

Sec. 10. Section 32-942, Reissue Revised Statutes of Nebraska, is amended to read:

32-942. Any registered voter of this state who is about to be absent from the county of his or her residence on the day of any election but who is present in the county after absentee ballots are available may appear in person before the election commissioner or county clerk and obtain his or her ballot. The ballot shall be voted registered voter shall vote in the office of the election commissioner or county clerk or returned to him or her shall return the ballot to the office during regular business hours.

Sec. 11. Section 32-943, Reissue Revised Statutes of Nebraska, is amended to read:

32-943. (1) Any registered voter who is permitted to vote absentee pursuant to section 32-938 may request an absentee ballot by appointing an agent to personally pick up an absentee ballot for such registered voter from the office of the election commissioner or county clerk. A registered voter shall request an absentee 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 address, telephone number if available, and precinct if known. The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter or his or her agent shall sign the request.

(2) A candidate for office at such election and any person serving on a campaign committee for such a candidate shall not act as an agent for any registered voter requesting a ballot pursuant to this section unless such person is a member of the registered voter's family. No person shall act as agent for more than two registered voters in any election.

(3) The agent shall pick up the ballot before 7 p.m. one hour prior to the closing of the polls on election day and deliver the ballot to the registered voter. The ballot shall be returned not later than the closing of the polls on the day of the election. 7 or if the registered voter chooses to return the ballot by mail, the ballot shall be received by the election office no later than 10 a.m. on the second day following the election.

(4) The election commissioner or county clerk shall adopt procedures for the distribution of absentee ballots under this section.

Sec. 12. Section 32-946, Reissue Revised Statutes of Nebraska, is amended to read:

32-946. When a registered voter applying for an absentee ballot has no residence address within the county, the election commissioner or county clerk shall mail to the registered voter at the address designated by the voter the requested ballot materials, including a set of registration forms, no later than the voter registration deadline and shall enclose with the material the following oath which the voter must swear to before his or her ballot will be counted:

I,, do hereby swear that prior to my current absence from County, Nebraska, I resided within the State of Nebraska, that during such residency it was my intention to make my permanent residence in such county, that during my current absence from such county I have not voted in an election in any other jurisdiction as a resident of such other jurisdiction, that I do not intend to make my present residence my permanent residence, that my current absence from such county is temporary and for a definite period of time, and that at the termination of that period I intend to return to County, Nebraska, and make it my permanent residence.

The election commissioner or county clerk shall make a good faith effort to maintain the secrecy of the ballot upon receiving the materials. If the registered voter fails to complete the oath and return it to the election commissioner or county clerk ~~by 10 a.m. on the second day following the election~~ prior to the closing of the polls on election day, his or her ballot shall not be counted. The residence address of the registered voter shall be deemed to be the office of the election commissioner or county clerk of the county of such voter's prior residence for purposes of the Election Act.

Sec. 13. Section 32-950, Reissue Revised Statutes of Nebraska, is

amended to read:

32-950. Absentee ballots which are returned not later than the hour established for the closing of the polls shall be accepted for approval by the absentee ballots counting board. ~~Absentee ballots which are returned by mail shall be accepted for approval by the absentee ballots 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 following election day. The election commissioner or county clerk shall keep the return envelopes received from registered voters after the closing of the polls unopened in a fireproof safe or other suitable location which is locked until delivered to the absentee ballots counting board.~~

Sec. 14. Section 32-954, Reissue Revised Statutes of Nebraska, is amended to read:

32-954. 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. 15. Section 32-956, Reissue Revised Statutes of Nebraska, is amended to read:

32-956. 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 fourth business day 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. 16. Section 32-1027, Revised Statutes Supplement, 2000, is amended to read:

32-1027. (1) The election commissioner or county clerk shall appoint two or more registered voters to the absentee ballots counting board. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the absentee ballots counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the absentee ballots counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The absentee ballots counting board shall meet as directed by the election commissioner or county clerk.

(2) The absentee ballots counting board shall place all absentee voter identification envelopes in order for counting. The absentee ballots counting board shall compare the voter's name on the identification envelope with the name on the absentee voter's book or with the application for an absentee ballot. If the name on the identification envelope appears to be that of a registered voter to whom an absentee ballot has been issued, the identification envelope shall be accepted for opening without further questioning. In counties using optical scanners, the absentee ballots

counting board may, on the Thursday day before the election, check the names on the identification envelopes received and open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting on election day. In other counties, the absentee ballots counting board may, on the Thursday day before the election, check the names on the identification envelopes received prior to election day. If an identification envelope is accepted for counting, the identification envelope shall be placed in a sealed container for counting on election day. The absentee ballots counting board shall convene on election day to begin counting absentee ballots previously accepted. On election day, all identification envelopes which have been received and approved on or before election day shall be opened, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be placed without unfolding into a ballot box.

(3) The absentee ballots counting board shall reject an absentee voter identification envelope if the signature of the registered voter is missing or if the name and address on the identification envelope do not match the registered voter's voter registration. If an identification envelope is rejected, the absentee ballots counting board shall not open the identification envelope. If the ballot is rejected after opening the identification envelope because of the absence of the official signature on the ballot, the ballot shall be marked Rejected, no official signature. The absentee ballots counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Absentee Ballots and seal it.

(4) As soon as all ballots have been placed in the ballot box and rejected identification envelopes or ballots have been sealed in the Rejected Absentee Ballots container, the absentee ballots counting board shall count the absentee ballots the same as all other ballots and an unofficial count shall be released to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Sec. 17. Section 79-552, Reissue Revised Statutes of Nebraska, is amended to read:

79-552. The board of education of a Class V school district shall consist of twelve members, one elected from each district pursuant to section 32-545, and also may include a nonvoting student member or members selected pursuant to section 79-559. Each elected member shall be a resident of the district for at least six months prior to the election. Each candidate for election to and each member of the board of education shall be a taxpayer in and a resident of the district of such school district as designated ~~by the election commissioner~~ pursuant to section 32-552. All persons elected as members of the board of education shall take and subscribe to the usual oath of office before the first Monday in January following their election, and the student member shall take and subscribe to the usual oath of office before the first Monday in January following his or her designation. In case any person so elected fails so to do, his or her election shall be void and the vacancy shall be filled by the board.

Sec. 18. Original sections 10-703.01, 29-1401.02, 32-303, 32-552, 32-802, 32-819, 32-933, 32-941, 32-942, 32-943, 32-946, 32-950, 32-954, 32-956, and 79-552, Reissue Revised Statutes of Nebraska, and sections 29-1401 and 32-1027, Revised Statutes Supplement, 2000, are repealed.

Sec. 19. The following sections are outright repealed: Sections 29-1401.01 and 32-1029, Reissue Revised Statutes of Nebraska.