

LEGISLATIVE BILL 401

Approved by the Governor May 10, 2005

Introduced by Fischer, 43; Price, 26

AN ACT relating to elections; to amend sections 31-735, 32-101, 32-903, 32-904, 32-915, 32-939, and 32-1041, Reissue Revised Statutes of Nebraska; to change provisions relating to the election of the board of trustees of sanitary and improvement districts; to change provisions relating to registering to vote, precincts, polling places, voting, and ballots; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 31-735, Reissue Revised Statutes of Nebraska, is amended to read:

31-735. (1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than seventy-five days prior to the election.

(2) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after the date

specified pursuant to subsection (1) of this section may vote when such person establishes their right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any public, private, or municipal corporation owning any land or lot in the district may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 10 a.m. of the first Thursday following the election.

Sec. 2. Section 32-101, Reissue Revised Statutes of Nebraska, is amended to read:

32-101. Sections 32-101 to 32-1551 and sections 6, 8, and 9 of this act shall be known and may be cited as the Election Act.

Sec. 3. Section 32-903, Reissue Revised Statutes of Nebraska, is amended to read:

32-903. (1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

(3) All precincts and polling places may be consolidated for the use of electronic voting systems into fewer and larger precincts as deemed necessary and advisable by the election commissioner or county clerk. Such precincts, consolidated for electronic voting systems only, may have as many registered voters therein as deemed advisable in the interest of economy and efficiency. At least one electronic voting device shall be provided for every five hundred registered voters voting in the consolidated precinct or polling place at the immediately preceding general election.

Sec. 4. Section 32-904, Reissue Revised Statutes of Nebraska, is amended to read:

32-904. The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons. When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving and counting boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving and counting boards. Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Sec. 5. Section 32-915, Reissue Revised Statutes of Nebraska, is amended to read:

32-915. (1) If a person is registered to vote but (a) his or her name does not appear in the voter registration register or his or her name appears with a notation that he or she received a ballot for early voting, (b) he or she is not entitled to vote under section 32-914.01 or 32-914.02, and (c) he or she has continuously resided in such county since registering to vote whether or not he or she has moved within the county, the person shall be notified by a judge or clerk of election or precinct inspector that the person is entitled to vote upon completing a voter registration form at the polling place for his or her place of residence.

(2) The person shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in County;

(b) (i) I registered to vote on approximately (write the approximate date you registered to vote) and I registered to vote (check one):

- in person at the election office or a voter registration site,
- by mail,
- on a form through the Department of Motor Vehicles,
- on a form through another state agency,
- in some other way; or

(ii) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(c) My current address is shown on the voter registration form; and

(d) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(3) The certification shall be signed under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to five years imprisonment, a fine of up to ten thousand dollars, or both.

Sec. 6. (1) A person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(2) A person registering to vote or voting pursuant to this section shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

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(Signature of Voter)

Sec. 7. Section 32-939, Reissue Revised Statutes of Nebraska, is amended to read:

32-939. (1) The persons listed in this subsection who are residents of Nebraska but who reside outside the United States shall be allowed to simultaneously register to vote and make application for absentee ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States and their spouses and dependents residing with them;

(b) Citizens temporarily residing outside of the United States and the District of Columbia; and

(c) Overseas citizens.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application and mailing of absentee ballots. The request for absentee ballots and registration forms shall be sent to the election commissioner or county clerk of the county of the applicant's residence at any time in the same calendar year but prior to any election. If so requested, absentee ballots may be sent for all elections held in the county in that calendar year.

(3) Any person meeting the criteria in subsection (1) of this section may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(4) Any person meeting the criteria in subsection (1) of this section requesting an absentee ballot under this section or the special absentee ballot described in section 32-808 may receive and return the ballot and the oath prescribed in subsection (2) of section 32-947 ~~by facsimile but shall return the cast ballot and completed oath by mail using any method of transmission~~ authorized by the Secretary of State.

Sec. 8. 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 noon 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 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. 9. In any county with less than seven thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county in lieu of establishing polling places for such precincts. The application shall include a written plan for the conduct of the election, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be 8 p.m. on the day of the election.

Sec. 10. Section 32-1041, Reissue Revised Statutes of Nebraska, is amended to read:

32-1041. The election commissioner or county clerk may use paper ballots, optical-scan ballots, or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. Paper ballots may be used in combination with other methods of casting ballots. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners. Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Sec. 11. Original sections 31-735, 32-101, 32-903, 32-904, 32-915, 32-939, and 32-1041, Reissue Revised Statutes of Nebraska, are repealed.