

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 125

Introduced by McCollister, 20.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to the Election Act; to amend sections 32-801,
- 2 32-812, 32-813, 32-817, 32-1003, 32-1004, 32-1005, 32-1006, 32-1119,
- 3 and 32-1122, Reissue Revised Statutes of Nebraska, and sections
- 4 32-101, 32-103, 32-202, 32-816, 32-901, and 32-1008, Revised
- 5 Statutes Cumulative Supplement, 2020; to define terms; to provide
- 6 for ranked-choice voting for certain offices; to harmonize
- 7 provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 32-101 Sections 32-101 to 32-1551 and sections 3 and 11 of this act
4 shall be known and may be cited as the Election Act.

5 Sec. 2. Section 32-103, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 32-103 For purposes of the Election Act, the definitions found in
8 sections 32-104 to 32-120 and section 3 of this act shall be used.

9 Sec. 3. Ranked-choice voting means an election voting system in
10 which a voter uses a ranked ballot to indicate the voter's preference
11 between candidates and the results are determined using the ranked-choice
12 voting count pursuant to section 11 of this act.

13 Sec. 4. Section 32-202, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 32-202 In addition to any other duties prescribed by law, the
16 Secretary of State shall:

17 (1) Supervise the conduct of primary and general elections in this
18 state;

19 (2) Provide training for election commissioners, county clerks, and
20 other election officials in providing for registration of voters and the
21 conduct of elections;

22 (3) Enforce the Election Act;

23 (4) With the assistance and advice of the Attorney General, make
24 uniform interpretations of the act;

25 (5) Provide periodic training for the agencies and their agents and
26 contractors in carrying out their duties under sections 32-308 to 32-310;

27 (6) Develop and print forms for use as required by sections 32-308,
28 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;

29 (7) Contract with the Department of Administrative Services for
30 storage and distribution of the forms;

31 (8) Require reporting to ensure compliance with sections 32-308 to

1 32-310;

2 (9) Prepare and transmit reports as required by the National Voter
3 Registration Act of 1993, 52 U.S.C. 20501 et seq.;

4 (10) Provide for the proper and efficient administration of
5 elections determined by ranked-choice voting, including procedures for
6 requesting and conducting recounts of the results as determined in the
7 rounds of counting as provided in section 11 of this act;

8 (11) ~~(10)~~ Develop and print a manual describing the requirements of
9 the initiative and referendum process and distribute the manual to
10 election commissioners and county clerks for distribution to the public
11 upon request;

12 (12) ~~(11)~~ Develop and print pamphlets described in section
13 32-1405.01;

14 (13) ~~(12)~~ Adopt and promulgate rules and regulations as necessary
15 for elections conducted under sections 32-952 to 32-959; and

16 (14) ~~(13)~~ Establish a free access system, such as a toll-free
17 telephone number or an Internet web site, that any voter who casts a
18 provisional ballot may access to discover whether the vote of that voter
19 was counted and, if the vote was not counted, the reason that the vote
20 was not counted. The Secretary of State shall establish and maintain
21 reasonable procedures necessary to protect the security, confidentiality,
22 and integrity of personal information collected, stored, or otherwise
23 used by the free access system. Access to information about an individual
24 provisional ballot shall be restricted to the individual who cast the
25 ballot.

26 Sec. 5. Section 32-801, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 32-801 (1) At least fifty days before any statewide primary or
29 general election, the Secretary of State shall transmit in ballot form to
30 each election commissioner or county clerk a certification of the
31 candidates, offices, and issues that appear on the state ballot.

1 (2) The certification prior to the primary election shall name the
2 office to be filled, the length of the term, the number of candidates to
3 be nominated ~~voted for~~, the name of each candidate for whom candidate
4 filing forms or petitions have been filed in the office of the Secretary
5 of State and who is entitled to be voted for at such primary election,
6 and the party affiliation or nonpartisan status of each candidate. A
7 separate statement of the city or village of residence of each candidate
8 shall be included with the certification, but the city or village of
9 residence shall not appear on the official ballot.

10 (3) The certification prior to the general election shall name the
11 office to be filled, the length of the term, the number of candidates to
12 be elected ~~voted for~~, the name of each candidate who was nominated at the
13 primary election or who filed by petition as shown by the records in the
14 office of the Secretary of State and who is entitled to be voted for at
15 the general election, and the party affiliation or nonpartisan status of
16 each candidate for partisan offices.

17 Sec. 6. Section 32-812, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 32-812 The form of the official ballot at the statewide general
20 election shall be prescribed by the Secretary of State. At the top of the
21 ballot for general elections and over all else shall be printed in
22 boldface type the words Official Ballot, General Election,
23 November, 20.... . Each division containing the name ~~names~~ of
24 the office and a list of candidates nominated for such office shall be
25 separated from other groups by a bold line. The ballot shall list at-
26 large candidates and subdistrict candidates under appropriate headings.

27 Sec. 7. Section 32-813, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 32-813 (1) The names of all candidates and all proposals to be voted
30 upon at the general election shall be arranged upon the ballot in parts
31 separated from each other by bold lines in the order the offices and

1 proposals are set forth in this section. If any office is not subject to
2 the upcoming election, the office shall be omitted from the ballot and
3 the remaining offices shall move up so that the same relative order is
4 preserved. The order of any offices may be altered to allow for the best
5 utilization of ballot space in order to avoid printing a second ballot
6 when one ballot would be sufficient if an optical-scan ballot is used.
7 All proposals on the ballot submitted by a political subdivision shall
8 follow all offices on the ballot submitted by a political subdivision.
9 The ballot shall be designed to allow for ranked-choice voting if
10 applicable as provided in section 11 of this act for the offices of
11 Representative in Congress, United States Senator, member of the
12 Legislature, and Governor.

13 (2)(a) If the election is in a year in which a President of the
14 United States is to be elected, the names and spaces for voting for
15 candidates for President and Vice President shall be entitled
16 Presidential Ticket in boldface type.

17 (b) The names of candidates for President and Vice President for
18 each political party shall be grouped together, and each group shall be
19 enclosed with brackets with the political party name next to the brackets
20 and one square or oval opposite the names in which the voter indicates
21 his or her choice.

22 (c) The names of candidates for President and Vice President who
23 have successfully petitioned on the ballot for the general election shall
24 be grouped together with the candidates appearing on the same petition
25 being grouped together, and each group shall be enclosed with brackets
26 with the words "By Petition" next to the brackets and one square or oval
27 opposite the names in which the voter indicates his or her choice.

28 (d) Beneath the names of the candidates for President and Vice
29 President certified by the officers of the national political party
30 conventions pursuant to section 32-712 and beneath the names of all
31 candidates for President and Vice President placed on the general

1 election ballot by petition, two write-in lines shall be provided in
2 which the voter may fill in the names of the candidates of his or her
3 choice. The lines shall be enclosed with brackets with one square or oval
4 opposite the names in which the voter indicates his or her choice. The
5 name appearing on the top line shall be considered to be the candidate
6 for President, and the name appearing on the second line shall be
7 considered to be the candidate for Vice President.

8 (3) The names and spaces for voting for candidates for United States
9 Senator if any are to be elected shall be entitled United States
10 Senatorial Ticket in boldface type.

11 (4) The names and spaces for voting for candidates for
12 Representatives in Congress shall be entitled Congressional Ticket in
13 boldface type. Above the candidates' names, the office shall be
14 designated For Representative in Congress District.

15 (5) The names and spaces for voting for candidates for the various
16 state officers shall be entitled State Ticket in boldface type. Each set
17 of candidates shall be separated by lines across the column, and above
18 each set of candidates shall be designated the office for which they are
19 candidates, arranged in the order prescribed by the Secretary of State.
20 The candidates for Governor of each political party receiving the highest
21 number of votes in the primary election shall be grouped together with
22 their respective candidates for Lieutenant Governor. Each group shall be
23 enclosed with brackets with the political party name next to the
24 brackets, ~~and one square or oval opposite the names in which~~ the voter
25 indicates his or her choice for Governor and Lieutenant Governor jointly.
26 The candidates for Governor and Lieutenant Governor who have successfully
27 petitioned on the general election ballot shall be grouped together with
28 the candidates appearing on the same petition being grouped together.
29 Each group shall be enclosed with brackets with the words "By Petition"
30 next to the brackets, ~~and one square or oval opposite the names in which~~
31 the voter indicates his or her choice for Governor and Lieutenant

1 Governor jointly. Beneath the names of the candidates for Governor
2 nominated at a primary election by political party and their respective
3 candidates for Lieutenant Governor and beneath the names of all
4 candidates for Governor and Lieutenant Governor placed on the general
5 election ballot by petition, one write-in line shall be provided in which
6 the registered voter may fill in the name of the candidate for Governor
7 of his or her choice ~~and one square or oval opposite the line in which~~
8 ~~the voter indicates his or her choice for Governor.~~

9 (6) The names and spaces for voting for nonpartisan candidates shall
10 be entitled Nonpartisan Ticket in boldface type. The names of all
11 nonpartisan candidates shall appear in the order listed in this
12 subsection, except that when using an optical-scan ballot, the order of
13 offices may be altered to allow for the best utilization of ballot space
14 to avoid printing a second ballot when one ballot would be sufficient:

- 15 (a) Legislature;
- 16 (b) State Board of Education;
- 17 (c) Board of Regents of the University of Nebraska;
- 18 (d) Chief Justice of the Supreme Court;
- 19 (e) Judge of the Supreme Court;
- 20 (f) Judge of the Court of Appeals;
- 21 (g) Judge of the Nebraska Workers' Compensation Court;
- 22 (h) Judge of the District Court;
- 23 (i) Judge of the Separate Juvenile Court;
- 24 (j) Judge of the County Court; and
- 25 (k) County officers in the order prescribed by the election
26 commissioner or county clerk.

27 (7) The names and spaces for voting for the various county offices
28 and for measures submitted to the county vote only or in only a part of
29 the county shall be entitled County Ticket in boldface type. If the
30 election commissioner or county clerk deems it advisable, the measures
31 may be submitted on a separate ballot if using a paper ballot or on

1 either side of an optical-scan ballot if the ballot is placed in a ballot
2 envelope or sleeve before being deposited in a ballot box.

3 (8) The candidates for office in the precinct only or in the city or
4 village only shall be printed on the ballot, except that if the election
5 commissioner or county clerk deems it advisable, candidates for these
6 offices may be submitted on a separate ballot if using a paper ballot or
7 on either side of an optical-scan ballot if the ballot is placed in a
8 ballot envelope or sleeve before being deposited in a ballot box.

9 (9) All proposals submitted by initiative or referendum and
10 proposals for constitutional amendments shall be placed on a separate
11 ballot when a paper ballot is used which requires that the ballot after
12 being voted be folded before being deposited in a ballot box. When an
13 optical-scan ballot is used which requires a ballot envelope or sleeve in
14 which the ballot after being voted is placed before being deposited in a
15 ballot box, initiative or referendum proposals and proposals for
16 constitutional amendments may be placed on either side of the ballot,
17 shall be separated by a bold line, and shall follow all other offices
18 placed on the same side of the ballot. Initiative or referendum proposals
19 and constitutional amendments so arranged shall constitute a separate
20 ballot. Proposals for constitutional amendments proposed by the
21 Legislature shall be placed on the ballot as provided in sections 49-201
22 to 49-211.

23 Sec. 8. Section 32-816, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 32-816 (1)(a) ~~(1)~~ A blank space shall be provided at the end of
26 each office division on the ballot for registered voters to fill in the
27 name of any person for whom they wish to vote and whose name is not
28 printed upon the ballot, except that at the primary election there shall
29 be no write-in space for delegates to the county political party
30 convention or delegates to the national political party convention.

31 (b) Except as otherwise provided in subdivision (c) of this

1 subsection, a A square or oval shall be printed opposite each write-in
2 space similar to the square or oval placed opposite other candidates and
3 issues on the ballot. The square or oval shall be marked to vote for a
4 write-in candidate whose name appears in the write-in space provided.

5 (c) If ranked-choice voting applies, the ballot shall be designed to
6 allow the voter to rank the write-in candidate in the same manner as
7 other candidates as provided in section 32-901. The rank shall be marked
8 to constitute a valid vote for the write-in candidate whose name appears
9 in the write-in space provided.

10 (2) The Secretary of State shall approve write-in space for optical-
11 scan ballots and any other voting system authorized for use under the
12 Election Act. Adequate provision shall be made for write-in votes
13 sufficient to allow one write-in space for each office to be elected at
14 any election except offices for which write-in votes are specifically
15 prohibited. The write-in ballot shall clearly identify the office for
16 which such write-in vote is cast. The write-in space shall be a part of
17 the official ballot, may be on the envelope or a separate piece of paper
18 from the printed portion of the ballot, and shall allow the voter
19 adequate space to fill in the name of the candidate for whom the voter he
20 ~~or she~~ desires to cast the his or her ballot and, if ranked-choice voting
21 applies, to indicate the voter's rank for the candidate.

22 Sec. 9. Section 32-817, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 32-817 The names of the candidates shall be set in boldface type
25 using capital and lowercase letters. A square or oval shall be printed
26 opposite the name of each candidate, except that if ranked-choice voting
27 applies, the ballot shall be designed to allow the voter to rank the
28 candidates, including any candidate who has filed an affidavit as a
29 write-in candidate pursuant to section 32-615, by providing as many ovals
30 or other spaces as there are candidates for the position to be filled and
31 placing numerals in the ovals or other spaces beginning with the numeral

1 "1" and continuing through the number of candidates, including any
2 candidate who has filed an affidavit as a write-in candidate pursuant to
3 section 32-615. At the general election, the name of the party
4 represented by a candidate for partisan office shall be printed in
5 capital and lowercase letters next to the name. Proposals submitted by
6 initiative or referendum or for constitutional amendments shall be
7 printed in capital and lowercase letters, but the title heading and
8 number thereof shall be in boldface type, and the square or oval for
9 voting thereon shall be printed opposite the text so that it is clear for
10 which issue the voter is casting a vote. Ballots shall be printed with
11 substantially the same appearance, including type and form, as the sample
12 ballot furnished by the Secretary of State.

13 Sec. 10. Section 32-901, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 32-901 (1) To vote for a candidate or on a ballot question using a
16 paper ballot that is to be manually counted, the registered voter shall
17 make a cross or other clear, discernable mark in the square opposite the
18 name of every candidate, including write-in candidates, for whom the
19 voter ~~he or she~~ desires to vote and, in the case of a ballot question,
20 opposite the answer the voter ~~he or she~~ wishes to give. Making a cross or
21 other clear, discernable mark in the square constitutes a valid vote.
22 This subsection shall not apply to ranked-choice voting.

23 (2)(a) Except as otherwise provided in subdivision (b) of this
24 subsection, to (2) To vote for a candidate or on a ballot question using
25 a ballot that is to be counted by optical scanner, the registered voter
26 shall fill in the oval or other space provided opposite the name of every
27 candidate, including write-in candidates, for whom the voter ~~he or she~~
28 desires to vote and, in the case of a ballot question, opposite the
29 answer the voter ~~he or she~~ wishes to give. A mark in the oval or provided
30 space that is discernable by the scanner constitutes a valid vote.

31 (b) To rank a candidate for an office which is subject to ranked-

1 choice voting using a ballot that is to be counted by optical scanner,
2 the registered voter shall fill in the oval or other space provided
3 opposite the name of every candidate, including write-in candidates,
4 indicating the rank of each candidate for whom the voter desires to
5 indicate a ranking. A mark in an oval or provided space that is
6 discernable by the scanner constitutes a valid vote. Marking the same
7 rank for more than one candidate constitutes an overvote for that ranking
8 which shall not be counted. Failing to mark a rank for any candidate
9 shall not disqualify the ballot except as provided in section 11 of this
10 act.

11 (3)(a) Except as otherwise provided in subdivision (b) of this
12 subsection, to (3) To vote for a candidate or on a ballot question using
13 a voting system with an electronic aspect authorized for use under the
14 Election Act, the registered voter shall follow the instructions for
15 using the voting system to cause a mark to be recorded opposite the
16 candidate or ballot question response for which the voter wishes to vote.
17 Causing such mark to be recorded does not constitute a valid vote. A
18 paper ballot printed to reflect the voter's choices constitutes a valid
19 vote.

20 (b) To vote for a candidate for an office which is subject to
21 ranked-choice voting using a voting system with an electronic aspect
22 authorized for use under the Election Act, the registered voter shall
23 follow the instructions for using the voting system to cause a mark to be
24 recorded indicating the rank of each candidate opposite the candidate for
25 which the voter wishes to indicate a ranking. Causing such mark to be
26 recorded does not constitute a valid vote. A paper ballot printed to
27 reflect the voter's choices constitutes a valid vote. Marking the same
28 rank for more than one candidate constitutes an overvote for that ranking
29 which shall not be counted. Failing to mark a rank for any candidate
30 shall not disqualify the ballot except as provided in section 11 of this
31 act.

1 Sec. 11. (1) For purposes of this section:

2 (a) Batch elimination means the simultaneous defeat of multiple
3 candidates for whom it is mathematically impossible to be elected;

4 (b) Continuing ballot means a ballot that is not an exhausted
5 ballot;

6 (c) Continuing candidate means a candidate who has not been
7 defeated;

8 (d) Exhausted ballot means a ballot that does not rank any
9 continuing candidate, contains an overvote at the highest continuing
10 ranking, or contains two or more sequential skipped rankings before its
11 highest continuing ranking;

12 (e) Highest continuing ranking means the highest ranking on a
13 voter's ballot for a continuing candidate;

14 (f) Last-place candidate means the candidate with the fewest votes
15 in a round of the ranked-choice voting count;

16 (g) Mathematically impossible to be elected, with respect to a
17 candidate, means either:

18 (i) The candidate cannot be elected because the candidate's vote
19 total in a round of the ranked-choice voting count plus all votes that
20 could possibly be transferred to the candidate in future rounds from
21 candidates with fewer votes or an equal number of votes would not be
22 enough to surpass the candidate with the next-higher vote total in the
23 round; or

24 (ii) The candidate has a lower vote total than a candidate described
25 in subdivision (i) of this subdivision;

26 (h) Overvote means a circumstance in which a voter has ranked more
27 than one candidate at the same ranking;

28 (i) Ranked-choice voting count means the ranked-choice counting
29 process described in this section and rules and regulations adopted and
30 promulgated by the Secretary of State;

31 (j) Ranking means the number assigned on a ballot by a voter to a

1 candidate to express the voter's preference for that candidate. Ranking
2 number "1" is the highest ranking, ranking number "2" is the next-highest
3 ranking, and so on;

4 (k) Round means an instance of the sequence of vote counting steps
5 established pursuant to subsection (2) of this section; and

6 (l) Skipped ranking means a circumstance in which a voter has left a
7 ranking blank and ranks a candidate at a subsequent ranking.

8 (2)(a) Except as provided in subsections (3) and (4) of this
9 section, the procedures in this subsection shall be used to determine the
10 winner of an election determined by ranked-choice voting. Ranked-choice
11 voting shall be used to determine the winner of an election to nominate
12 candidates for or elect candidates to the office of Representative in
13 Congress, United States Senator, member of the Legislature, and Governor,
14 except that ranked-choice voting shall only be used if there are three or
15 more candidates for the position to be filled, including any candidate
16 who has filed an affidavit as a write-in candidate pursuant to section
17 32-615.

18 (b) The ranked-choice voting count shall proceed in rounds. In each
19 round, the number of votes for each continuing candidate shall be
20 counted. Each continuing ballot counts as one vote for its highest-ranked
21 continuing candidate for that round. Exhausted ballots are not counted
22 for any continuing candidate. The round then ends with one of the
23 following two potential outcomes:

24 (i) If there are two or fewer continuing candidates, the candidate
25 with the most votes is declared the winner of the election; and

26 (ii) If there are more than two continuing candidates, the last-
27 place candidate is defeated and a new round begins.

28 (3)(a) A tie between candidates for the most votes in the final
29 round shall be decided as provided in section 32-1122.

30 (b) A tie between last-place candidates in any round shall be
31 decided by lot, and the candidate chosen by lot is defeated. The result

1 of the tie resolution shall be recorded and reused in the event of a
2 recount.

3 (4) Modification of a ranked-choice voting ballot and ranked-choice
4 voting count is permitted in accordance with the following:

5 (a) The number of allowable rankings may be limited to no fewer than
6 five; and

7 (b) Two or more candidates may be defeated simultaneously by batch
8 elimination in any round of counting.

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

11 32-1003 All valid votes shall be counted. No ballot shall be
12 rejected because the voter did not vote for every possible office or
13 position or rank every candidate.

14 Sec. 13. Section 32-1004, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 32-1004 If a ballot has been overvoted for any office, the ballot
17 shall be rejected for that office only, except that if the overvote is
18 for an office subject to ranked-choice voting, section 11 of this act
19 applies. No overvoted ballot shall be judged for voter intent by any
20 member of the counting board or any official involved in the counting
21 process.

22 Sec. 14. Section 32-1005, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 32-1005 If the last name or a reasonably close spelling of the last
25 name of a person engaged in or pursuing a write-in campaign pursuant to
26 section 32-615 or 32-633 is written or printed on a line provided for
27 that purpose and the square or oval opposite such line has been marked
28 with a cross or other clear, intelligible mark or, for ranked-choice
29 voting, a ranking has been clearly marked, the vote shall be valid and
30 the ballot shall be counted. Except as provided in section 32-1007, a
31 write-in vote for a person who is not engaged in or pursuing a write-in

1 campaign pursuant to section 32-615 or 32-633 shall not be counted.

2 Sec. 15. Section 32-1006, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 32-1006 If a vote is cast for a candidate whose name is printed on
5 the ballot and a name is filled in on the line provided for that purpose
6 for the same office, the ballot shall be rejected for the office
7 involved. The counting board shall make the following notation on the
8 ballot card and on the ballot envelope if any: Rejected for the office
9 of, overvoted, and the counting board shall immediately
10 duplicate the overvoted ballot omitting the overvoted portion of the
11 ballot and number the original ballot, ballot envelope if any, and
12 duplicate ballot with the same identifying number. The identifying number
13 shall be assigned in numerical order, and the original ballot shall
14 remain in the ballot envelope if any. This section does not apply to
15 ranked-choice voting.

16 Sec. 16. Section 32-1008, Revised Statutes Cumulative Supplement,
17 2020, is amended to read:

18 32-1008 If the write-in vote in the county for a person pursuing a
19 write-in campaign pursuant to section 32-615 or 32-633 totals less than
20 five percent of the vote for such office in the county and the election
21 commissioner or county clerk believes that such vote will not impact the
22 outcome of the election, the number of write-in votes for that office may
23 be counted and listed together as one total. This section does not apply
24 to ranked-choice voting.

25 Sec. 17. Section 32-1119, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 32-1119 (1) If it appears as evidenced by the abstract of votes that
28 any candidate failed to be nominated or elected for an office which is
29 not subject to ranked-choice voting at that election by a margin of (a)
30 one percent or less of the votes received by the candidate who received
31 the highest number of votes for the office at an election in which more

1 than five hundred total votes were cast or (b) two percent or less of the
2 votes received by the candidate who received the highest number of votes
3 for the office at an election in which five hundred or less total votes
4 were cast, then such candidate shall be entitled to a recount. Any losing
5 candidate may waive his or her right to a recount by filing a written
6 statement with the Secretary of State, election commissioner, or county
7 clerk with whom he or she made his or her filing. All expenses of a
8 recount under this section shall be paid by those political subdivisions
9 involved in the recount.

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

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

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

26 (5) The Secretary of State, election commissioner, or county clerk
27 shall notify all candidates whose ballots will be recounted of the time,
28 date, and place of the recount. Candidates whose ballots will be
29 recounted may be present or be represented by an agent appointed by the
30 candidate.

31 (6) The procedures for the recounting of ballots shall be the same

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

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

11 32-1122 (1) If a recount after a primary election results in any two
12 or more persons having an equal and the highest number of votes for the
13 same nomination for the same county, city, village, or school district
14 office, the county canvassing board shall, in the presence of the
15 candidates or their representatives, determine by lot which of the
16 candidates shall be nominated. The election commissioner or county clerk
17 shall notify such candidates by certified mail to appear at his or her
18 office on a given day and hour to determine the same before the county
19 canvassing board. The election commissioner or county clerk shall make a
20 certificate of nomination for the person so nominated and shall cause
21 such certificate to be delivered to the person entitled thereto.

22 (2) If a recount after a general or special election results in any
23 two or more persons having an equal and the highest number of votes for
24 the same county, city, village, or school district office, the county
25 canvassing board shall, in the presence of the candidates or their
26 representatives, determine by lot which of the candidates shall be
27 elected. The election commissioner or county clerk shall notify such
28 candidates by certified mail to appear at his or her office on a given
29 day and hour to determine the same before the county canvassing board.
30 The election commissioner or county clerk shall make a certificate of
31 election for the person so elected and shall cause such certificate to be

1 delivered to the person entitled thereto.

2 (3) If, ~~a recount~~ after a primary election, a recount or the final
3 round of a ranked-choice voting count pursuant to section 11 of this act
4 results in any two or more persons having an equal and the highest number
5 of votes for nomination to an office canvassed by the board of state
6 canvassers, the board shall decide by lot which of such persons is
7 nominated.

8 (4) If, ~~a recount~~ after a general or special election, a recount or
9 the final round of a ranked-choice voting count results in any two or
10 more persons having an equal and the highest number of votes for the
11 office of the Governor, Secretary of State, Auditor of Public Accounts,
12 State Treasurer, Attorney General, or other officer elected to an
13 executive department, the Legislature shall choose one of such persons
14 for the office. If the office involved in the recount is the office of
15 the Governor, the Lieutenant Governor shall be the candidate for
16 Lieutenant Governor chosen by the person selected by the Legislature as
17 Governor.

18 (5) If, ~~a recount~~ after a general or special election, a recount or
19 the final round of a ranked-choice voting count results in any two or
20 more persons having an equal and the highest number of votes for an
21 office canvassed by the board of state canvassers, the board shall decide
22 by lot which of such persons is elected, except officers elected to the
23 executive department.

24 Sec. 19. Original sections 32-801, 32-812, 32-813, 32-817, 32-1003,
25 32-1004, 32-1005, 32-1006, 32-1119, and 32-1122, Reissue Revised Statutes
26 of Nebraska, and sections 32-101, 32-103, 32-202, 32-816, 32-901, and
27 32-1008, Revised Statutes Cumulative Supplement, 2020, are repealed.