

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 608

Introduced by La Grone, 49; Hansen, M., 26.

Read first time January 23, 2019

Committee:

1 A BILL FOR AN ACT relating to the Election Act; to amend sections 32-221,
2 32-223, 32-230, 32-231, 32-236, 32-816, 32-901, 32-903, 32-910,
3 32-916, 32-1010, 32-1012, 32-1013, and 32-1041, Reissue Revised
4 Statutes of Nebraska; to prohibit use of and eliminate references to
5 electronic voting systems; to authorize use of precinct-based
6 optical scanners; to harmonize provisions; and to repeal the
7 original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-221, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 32-221 (1) The election commissioner shall appoint precinct and
4 district inspectors, judges of election, and clerks of election to assist
5 the election commissioner in conducting elections on election day. In
6 counties with a population of less than four hundred thousand inhabitants
7 as determined by the most recent federal decennial census, judges and
8 clerks of election and inspectors shall be appointed at least thirty days
9 prior to the statewide primary election, shall hold office for terms of
10 two years or until their successors are appointed and qualified for the
11 next statewide primary election, and shall serve at all elections in the
12 county during their terms of office. In counties with a population of
13 four hundred thousand or more inhabitants as determined by the most
14 recent federal decennial census, judges and clerks of election shall be
15 appointed at least thirty days prior to the first election for which
16 appointments are necessary and shall serve for at least four elections.

17 (2) Judges and clerks of election may be selected at random from a
18 cross section of the population of the county. All qualified citizens
19 shall have the opportunity to be considered for service. All qualified
20 citizens shall fulfill their obligation to serve as judges or clerks of
21 election as prescribed by the election commissioner. No citizen shall be
22 excluded from service as a result of discrimination based upon race,
23 color, religion, sex, national origin, or economic status. No citizen
24 shall be excluded from service unless excused by reason of ill health or
25 other good and sufficient reason.

26 (3) All persons appointed shall be of good repute and character, be
27 able to read and write the English language, and except as otherwise
28 provided in subsection (4) ~~(5)~~ of section 32-223, be registered voters in
29 the county. No candidate at an election shall be appointed as a judge or
30 clerk of election or inspector for such election other than a candidate
31 for delegate to a county, state, or national political party convention.

1 (4) If a vacancy occurs in the office of judge or clerk of election
2 or inspector, the election commissioner shall fill such vacancy in
3 accordance with section 32-223. If any judge or clerk of election or
4 inspector fails to appear at the hour appointed for the opening of the
5 polls, the remaining officers shall notify the election commissioner,
6 select a registered voter to serve in place of the absent officer if so
7 directed by the election commissioner, and proceed to conduct the
8 election. If the election commissioner finds that a judge or clerk of
9 election or inspector does not possess all the qualifications prescribed
10 in this section or if any judge or clerk of election or inspector is
11 guilty of neglecting the duties of the office or of any official
12 misconduct, the election commissioner shall remove the person and fill
13 the vacancy.

14 Sec. 2. Section 32-223, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 32-223 (1) Except as otherwise provided in the Election Act For each
17 precinct except as provided in subsection (2) of this section, the
18 election commissioner shall appoint a precinct inspector and a receiving
19 board to consist of at least two judges and two clerks of election for
20 each precinct. The election commissioner may appoint district inspectors
21 to aid the election commissioner in the performance of his or her duties
22 and supervise a group of precincts on election day.

23 ~~(2) In precincts in which electronic voting systems are used, the~~
24 ~~receiving board shall have at least three members.~~

25 (2) ~~(3)~~ The election commissioner may allow persons serving on a
26 receiving board as judges and clerks of election and precinct inspectors
27 to serve for part of the time the polls are open and appoint other judges
28 and clerks of election and precinct inspectors to serve on the same
29 receiving board for the remainder of the time the polls are open.

30 (3) ~~(4)~~ On each receiving board at any one time, one judge and one
31 clerk of election shall be registered voters of the political party

1 casting the highest number of votes in the county for Governor or for
2 President of the United States in the immediately preceding general
3 election, and one judge and one clerk of election shall be registered
4 voters of the political party casting the next highest number of votes in
5 the county for Governor or for President of the United States in the
6 immediately preceding general election, except that one judge or clerk of
7 election may be a registered voter who is not affiliated with either of
8 such parties. If a third judge is appointed, such judge shall be a
9 registered voter of the political party casting the highest number of
10 votes in the county for Governor or for President of the United States in
11 the immediately preceding general election. All precinct and district
12 inspectors shall be divided between all political parties as nearly as
13 practicable in proportion to the number of votes cast in such county at
14 the immediately preceding general election for Governor or for President
15 of the United States by the parties, respectively.

16 (4) ~~(5)~~ The election commissioner may appoint a person who is at
17 least sixteen years old but is not eligible to register to vote as a
18 clerk of election. Such clerk of election shall meet the requirements of
19 subsection (3) of section 32-221, except that such clerk shall not be
20 required to be a registered voter. No more than one clerk of election
21 appointed under this subsection shall serve at any precinct. A clerk of
22 election appointed under this subsection shall be considered a registered
23 voter who is not affiliated with a political party for purposes of this
24 section.

25 Sec. 3. Section 32-230, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 32-230 (1) As provided in subsection (4) ~~(5)~~ of this section, the
28 precinct committeeman and committeewoman of each political party shall
29 appoint a receiving board consisting of three judges of election and two
30 clerks of election ~~except as provided in subsection (3) of this section.~~
31 The chairperson of the county central committee of each political party

1 shall send the names of the appointments to the county clerk no later
2 than February 1 prior to the primary election.

3 (2) If no names are submitted by the chairperson, the county clerk
4 shall appoint judges or clerks of election from the appropriate political
5 party. Judges and clerks of election may be selected at random from a
6 cross section of the population of the county. All qualified citizens
7 shall have the opportunity to be considered for service. All qualified
8 citizens shall fulfill their obligation to serve as judges or clerks of
9 election as prescribed by the county clerk. No citizen shall be excluded
10 from service as a result of discrimination based upon race, color,
11 religion, sex, national origin, or economic status. No citizen shall be
12 excluded from service unless excused by reason of ill health or other
13 good and sufficient reason.

14 ~~(3) In precincts in which electronic voting systems are used, the~~
15 ~~receiving board shall have at least three members.~~

16 (3) ~~(4)~~ The county clerk may allow persons serving on a receiving
17 board to serve for part of the time the polls are open and appoint other
18 persons to serve on the same receiving board for the remainder of the
19 time the polls are open.

20 (4) ~~(5)~~ In each precinct at any one time, one judge and one clerk of
21 election shall be appointed from the political party casting the highest
22 number of votes in the county for Governor or for President of the United
23 States in the immediately preceding general election, one judge and one
24 clerk shall be appointed from the political party casting the next
25 highest number of votes in the county for Governor or for President of
26 the United States in the immediately preceding general election, and one
27 judge shall be appointed from the political party casting the third
28 highest number of votes in the county for Governor or for President of
29 the United States in the immediately preceding general election. If the
30 political party casting the third highest number of votes cast less than
31 ten percent of the total vote cast in the county at the immediately

1 preceding general election, the political party casting the highest
2 number of votes at the immediately preceding general election shall be
3 entitled to two judges and one clerk.

4 (5) ~~(6)~~ The county clerk may appoint registered voters to serve in
5 case of a vacancy among any of the judges or clerks of election or in
6 addition to the judges and clerks in any precinct when necessary to meet
7 any situation that requires additional judges and clerks. Such appointees
8 may include registered voters unaffiliated with any political party. Such
9 appointees shall serve at subsequent or special elections as determined
10 by the county clerk.

11 (6) ~~(7)~~ The county clerk may appoint a person who is at least
12 sixteen years old but is not eligible to register to vote as a clerk of
13 election. Such clerk of election shall meet the requirements of
14 subsection (1) of section 32-231, except that such clerk shall not be
15 required to be a registered voter. No more than one clerk of election
16 appointed under this subsection shall serve at any precinct. A clerk of
17 election appointed under this subsection shall be considered a registered
18 voter who is not affiliated with a political party for purposes of this
19 section.

20 Sec. 4. Section 32-231, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 32-231 (1) Each judge and clerk of election appointed pursuant to
23 section 32-230 shall (a) be of good repute and character and able to read
24 and write the English language, (b) reside in the precinct in which he or
25 she is to serve unless necessity demands that personnel be appointed from
26 another precinct, (c) be a registered voter except as otherwise provided
27 in subsection (6) ~~(7)~~ of section 32-230, and (d) serve for a term of two
28 years or until judges and clerks of election are appointed for the next
29 primary election. No candidate at an election shall be eligible to serve
30 as a judge or clerk of election at the same election other than a
31 candidate for a delegate to a county, state, or national political party

1 convention.

2 (2) The county clerk may appoint district inspectors to aid the
3 county clerk in the performance of his or her duties and supervise a
4 group of precincts on election day. A district inspector shall meet the
5 requirements for judges and clerks of election as provided in subsection
6 (1) of this section, shall oversee the procedures of a group of polling
7 places, and shall act as the personal agent and deputy of the county
8 clerk. The district inspector shall ensure that the Election Act is
9 uniformly enforced at the polling places assigned to him or her and
10 perform tasks assigned by the county clerk. The district inspector may
11 perform all of the duties required of a judge or clerk of election.

12 Sec. 5. Section 32-236, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 32-236 Each judge and clerk of election appointed pursuant to
15 subsection (4) ~~(5)~~ of section 32-230 and each district inspector
16 appointed pursuant to subsection (2) of section 32-231 shall serve at all
17 elections, except city and village elections, held in the county or
18 precinct during his or her two-year term unless excused. A violation of
19 this section by an appointee is a Class V misdemeanor. The county clerk
20 shall submit the names of appointees violating this section to the local
21 law enforcement agency for citation pursuant to sections 32-1549 and
22 32-1550.

23 Sec. 6. Section 32-816, Reissue Revised Statutes of Nebraska, is
24 amended to read:

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

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

4 (2) The Secretary of State shall approve write-in space for optical-
5 scan ballots and any other voting system authorized for use under the
6 Election Act ~~electronic voting systems~~. Adequate provision shall be made
7 for write-in votes sufficient to allow one write-in space for each office
8 to be elected at any election except offices for which write-in votes are
9 specifically prohibited. The write-in ballot shall clearly identify the
10 office for which such write-in vote is cast. The write-in space shall be
11 a part of the official ballot, may be on the envelope or a separate piece
12 of paper from the printed portion of the ballot, and shall allow the
13 voter adequate space to fill in the name of the candidate for whom he or
14 she desires to cast his or her ballot.

15 Sec. 7. Section 32-901, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 32-901 (1) To vote for a candidate or on a ballot question using a
18 paper ballot that is to be manually counted, the registered voter shall
19 make a cross or other clear, discernable mark in the square opposite the
20 name of every candidate, including write-in candidates, for whom he or
21 she desires to vote and, in the case of a ballot question, opposite the
22 answer he or she wishes to give. Making a cross or other clear,
23 discernable mark in the square constitutes a valid vote.

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

31 (3) To vote for a candidate or on a ballot question using a a ~~an~~

1 ~~electronic~~ voting system with an electronic aspect authorized for use
2 under the Election Act, the registered voter shall follow the
3 instructions for using the ~~electronic~~ voting system to cause a mark to be
4 recorded opposite the candidate or ballot question response for which the
5 voter wishes to vote. Causing such mark to be recorded does not
6 constitute ~~constitutes~~ a valid vote. A paper ballot printed to reflect
7 the voter's choices constitutes a valid vote.

8 Sec. 8. Section 32-903, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 32-903 (1) The election commissioner or county clerk shall create
11 precincts composed of compact and contiguous territory within the
12 boundary lines of legislative districts. The precincts shall contain not
13 less than seventy-five nor more than one thousand seven hundred fifty
14 registered voters based on the number of voters voting at the last
15 statewide general election, except that a precinct may contain less than
16 seventy-five registered voters if in the judgment of the election
17 commissioner or county clerk it is necessary to avoid creating an undue
18 hardship on the registered voters in the precinct. The election
19 commissioner or county clerk shall create precincts based on the number
20 of votes cast at the immediately preceding presidential election or the
21 current list of registered voters for the precinct. The election
22 commissioner or county clerk shall revise and rearrange the precincts and
23 increase or decrease them at such times as may be necessary to make the
24 precincts contain as nearly as practicable not less than seventy-five nor
25 more than one thousand seven hundred fifty registered voters voting at
26 the last statewide general election. The election commissioner or county
27 clerk shall, when necessary and possible, readjust precinct boundaries to
28 coincide with the boundaries of cities, villages, and school districts
29 which are divided into districts or wards for election purposes. The
30 election commissioner or county clerk shall not make any precinct changes
31 in precinct boundaries or divide precincts into two or more parts between

1 the statewide primary and general elections unless he or she has been
2 authorized to do so by the Secretary of State. If changes are authorized,
3 the election commissioner or county clerk shall notify each state and
4 local candidate affected by the change.

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

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

22 Sec. 9. Section 32-910, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 32-910 Any judge or clerk of election, precinct or district
25 inspector, sheriff, or other peace officer shall clear the passageways
26 and prevent obstruction of the doors or entries and provide free ingress
27 to and egress from the polling place or building and shall arrest any
28 person obstructing such passageways. Other than a registered voter
29 engaged in receiving, preparing, or marking a ballot or depositing a
30 ballot in a ballot box or a precinct-based optical scanner at the polling
31 place, an election commissioner, a county clerk, a precinct inspector, a

1 district inspector, a judge of election, a clerk of election, or a member
2 of a counting board, no person shall be permitted to be within eight feet
3 of the ballot boxes or within eight feet of any ballots being counted by
4 a counting board.

5 Sec. 10. Section 32-916, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 32-916 (1) Two judges of election or a precinct inspector and a
8 judge of election shall affix their initials to the official ballots. The
9 judge of election shall deliver a ballot to each registered voter after
10 complying with section 32-914.

11 (2) After voting the ballot, the registered voter shall, as directed
12 by the judge of election, fold his or her ballot or place the ballot in
13 the ballot envelope or sleeve so as to conceal the voting marks and to
14 expose the initials affixed on the ballot. The registered voter shall,
15 without delay and without exposing the voting marks upon the ballot,
16 deliver the ballot to the judge of election before leaving the enclosure
17 in which the voting booths are placed.

18 (3) The judge of election shall, without exposing the voting marks
19 on the ballot, approve the exposed initials upon the ballot and deposit
20 the ballot in the ballot box or the precinct-based optical scanner in the
21 presence of the registered voter. No judge of election shall deposit any
22 ballot in a ballot box unless the ballot has been identified as having
23 the appropriate initials. Any ballot not properly identified shall be
24 rejected in the presence of the voter, the judge of election shall make a
25 notation on the ballot Rejected, not properly identified, and another
26 ballot shall be issued to the voter and the voter shall then be permitted
27 to cast his or her ballot. If the ballot is in order, the judge shall
28 deposit the ballot in the ballot box or the precinct-based optical
29 scanner in the presence of the voter and the voter shall promptly leave
30 the polling place. If a precinct uses a precinct-based optical scanner
31 and a ballot is identified by the scanner as containing an overvote or an

1 undervote, the voter shall be notified of the consequence of an overvote
2 and the right to vote in the case of an undervote, whichever is
3 applicable. The judges of election shall maintain the secrecy of the
4 rejected ballots and shall cause the rejected ballots to be made up in a
5 sealed packet. The judges of election shall endorse the packet with the
6 words Rejected Ballots and the designation of the precinct. The judges of
7 election shall sign the endorsement label and shall return the packet to
8 the election commissioner or county clerk with a statement by the judges
9 of election showing the number of ballots rejected.

10 (4) Upon receiving a provisional ballot as provided in section
11 32-915, the judge of election shall give the voter written information
12 that states that the voter may determine if his or her vote was counted
13 and, if not, the reason that the vote was not counted by accessing the
14 system created pursuant to section 32-202 and the judge of election shall
15 ensure that the appropriate information is on the outside of the envelope
16 in which the ballot is enclosed or attached to the envelope, attach the
17 statement required by section 32-915 if not contained on the envelope,
18 and place the entire envelope into the ballot box. Upon receiving a
19 provisional ballot as provided in section 32-915.01, the judge of
20 election shall comply with the requirements for a provisional ballot
21 under this subsection, except that a provisional ballot cast pursuant to
22 section 32-915.01 shall be kept separate from the other ballots cast at
23 the election.

24 Sec. 11. Section 32-1010, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 32-1010 Ballots shall be counted ~~or compiled~~ at a centralized
27 location or at polling places as provided in sections 32-1012 to 32-1018.
28 If counting takes place at a centralized location, the ~~The~~ receiving
29 board shall deliver the ballot box and other election materials to the
30 centralized location as directed by the election commissioner or county
31 clerk.

1 Sec. 12. Section 32-1012, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 32-1012 (1) In counties using ~~electronic voting systems~~ or optical
4 scanners to count the ballots at a centralized location, the election
5 commissioner or county clerk may arrange to have partial returns
6 delivered, properly locked or sealed, to the centralized location or
7 locations at any time desired after the opening of the polls if at least
8 twenty-five ballots have been cast since any prior delivery of ballots.
9 The election commissioner or county clerk shall designate the location or
10 locations for counting the ballots and may designate a location or
11 locations in any county. Upon completion of the count, the ballots shall
12 be conveyed under supervision of the election commissioner or county
13 clerk to the office of such official. If for any reason it becomes
14 impracticable to count all or a part of the ballots with optical
15 scanners, the election commissioner or county clerk may direct that the
16 ballots be counted manually following as closely as possible the
17 provisions governing the manual counting of ballots.

18 (2) In counties using optical scanners to count the ballots at
19 polling places, the election commissioner or county clerk may arrange to
20 have partial returns delivered, properly locked, sealed, or digitally
21 secured, to the election office at any time desired after the opening of
22 the polls if at least twenty-five ballots have been cast since any prior
23 delivery of partial returns. The election commissioner or county clerk
24 shall designate polling places as locations for counting the ballots.
25 Upon completion of the count, the ballots shall be conveyed under
26 supervision of the election commissioner or county clerk to the office of
27 such official. If for any reason it becomes impracticable to count all or
28 a part of the ballots with optical scanners, the election commissioner or
29 county clerk may direct that the ballots be counted manually following as
30 closely as possible the provisions governing the manual counting of
31 ballots.

1 Sec. 13. Section 32-1013, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 32-1013 (1) In each counting ~~centralized~~ location, watchers may be
4 appointed to be present and observe the counting of ballots. Each
5 political party shall be entitled to one watcher at each location
6 appointed and supplied with credentials by the county central committee
7 of such political party. The district court having jurisdiction over any
8 such county may appoint additional watchers for any location.

9 (2) The watchers and the members of the counting board shall take
10 the following oath administered by the election commissioner or county
11 clerk or an election official designated by the election commissioner or
12 county clerk: I do solemnly swear that I will not in any manner make
13 known to anyone other than duly authorized election officials the results
14 of the votes as they are being counted until the polls have officially
15 closed and the summary of votes cast is delivered to the election
16 commissioner or county clerk.

17 (3) Except for polling places using precinct-based optical scanners,
18 all ~~All~~ other persons shall be excluded from the place where the counting
19 is being conducted except for observers authorized by the election
20 commissioner or county clerk. No such observer shall be connected with
21 any candidate, political party, or measure on the ballot.

22 Sec. 14. Section 32-1041, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 32-1041 (1) The election commissioner or county clerk may use
25 optical-scan ballots or voting systems approved by the Secretary of State
26 to allow registered voters to cast their votes at any election. The
27 election commissioner or county clerk may use vote counting devices and
28 voting systems approved by the Secretary of State for tabulating the
29 votes cast at any election. Vote counting devices shall include
30 electronic counting devices such as optical scanners.

31 (2) No electronic voting system shall be used under the Election

1 Act.

2 (3) Any new voting or counting system shall be approved by the
3 Secretary of State prior to use by an election commissioner or county
4 clerk. An election commissioner or county clerk may apply to the
5 Secretary of State for approval to use a counting method other than a
6 method already approved to conduct elections in his or her county. The
7 Secretary of State shall approve the counting method if the Secretary of
8 State determines that the method meets the objective guidelines developed
9 pursuant to subsection (4) of this section. The determination of the
10 Secretary of State shall not be appealable.

11 (4) ~~The Notwithstanding any other provision of the Election Act, the~~
12 Secretary of State may adopt and promulgate rules and regulations to
13 establish different procedures and locations for voting and counting
14 votes pursuant to the use of any new voting or counting system. The
15 procedures shall be designed to preserve the safety and confidentiality
16 of each vote cast and the secrecy and security of the counting process,
17 to establish security provisions for the prevention of fraud, and to
18 ensure that the election is conducted in a fair manner.

19 Sec. 15. Original sections 32-221, 32-223, 32-230, 32-231, 32-236,
20 32-816, 32-901, 32-903, 32-910, 32-916, 32-1010, 32-1012, 32-1013, and
21 32-1041, Reissue Revised Statutes of Nebraska, are repealed.