

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 808

Introduced by Halloran, 33; Erdman, 47; Hughes, 24.

Read first time January 18, 2023

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to elections; to amend sections 32-1118 and
2 32-1119, Reissue Revised Statutes of Nebraska, and sections 32-101,
3 32-103, and 32-1041, Revised Statutes Cumulative Supplement, 2022;
4 to define a term; to provide for the option of a hand count for
5 elections and recounts; to harmonize provisions; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

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

5 Sec. 2. Section 32-103, Revised Statutes Cumulative Supplement,
6 2022, 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. Hand count means to conduct a count or recount of ballots
10 by hand, without the assistance of any electronic device or equipment,
11 including, but not limited to, scanners. A hand count shall include only
12 the actual voted paper ballots, physically marked by the actual voter,
13 and not the voter's choices reproduced via any electronic device or
14 equipment, including, but not limited to, printers, except that any
15 ballot voted by a person with disabilities using a machine to assist in
16 marking the ballot shall be included in the hand count. A hand count
17 shall also include providing for the comparison and verification of the
18 signature on the envelope holding a ballot for early voting with the
19 signature on file with the election commissioner or county clerk for the
20 respective voter who requested the ballot for early voting.

21 Sec. 4. Section 32-1041, Revised Statutes Cumulative Supplement,
22 2022, is amended to read:

23 32-1041 (1) The election commissioner or county clerk may use
24 optical-scan ballots or voting systems approved by the Secretary of State
25 to allow registered voters to cast their votes at any election. The
26 election commissioner or county clerk may (a) conduct a hand count or (b)
27 use vote counting devices and voting systems approved by the Secretary of
28 State for tabulating the votes cast at any election. Vote counting
29 devices shall include electronic counting devices such as optical
30 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. The Secretary of State may adopt and promulgate rules and
5 regulations to establish different procedures and locations for voting
6 and counting votes pursuant to the use of any new voting or counting
7 system. The procedures shall be designed to preserve the safety and
8 confidentiality of each vote cast and the secrecy and security of the
9 counting process, to establish security provisions for the prevention of
10 fraud, and to ensure that the election is conducted in a fair manner.

11 Sec. 5. Section 32-1118, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 32-1118 (1) The apparent loser at a general election for a seat in
14 the Legislature may secure a recount of the ballots cast at such election
15 by filing a petition for a recount in duplicate with the Secretary of
16 State no later than the fourth Monday after the election. The petition
17 shall be accompanied by a corporate surety bond in the penal sum of two
18 thousand five hundred dollars conditioned for the payment of costs
19 pursuant to section 32-1116 if the recount fails to change the results of
20 the election. If at any stage of the recount the amount of the bond
21 becomes inadequate, the Secretary of State may order an increase in the
22 amount of such bond. The petition shall specify if a hand count is
23 requested by the person filing the petition.

24 (2) The Secretary of State shall, by certified or registered mail,
25 give notice of the filing of a petition under this section not later than
26 the day following the filing of the petition and deliver a copy of the
27 petition to the declared winner. The Secretary of State shall also, by
28 the most practicable means of communication, direct the election
29 commissioner or county clerk of each county involved to deliver the
30 ballot boxes to the office of the election commissioner or county clerk
31 designated by the Secretary of State no later than the following Monday.

1 (3) After the ballot boxes have been received at the designated
2 office, they shall be opened and the ballots for member of the
3 Legislature shall be recounted under the supervision of the Secretary of
4 State. The Secretary of State may employ such persons as may be necessary
5 to conduct the recount and fix their compensation. If a hand count is
6 requested pursuant to subsection (1) of this section, the recount shall
7 be conducted by hand count.

8 (4) The Secretary of State shall, on or before December 20, certify
9 the results of the recount to each of the parties to the recount and to
10 the Clerk of the Legislature.

11 Sec. 6. Section 32-1119, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 32-1119 (1) If it appears as evidenced by the abstract of votes that
14 any candidate failed to be nominated or elected by a margin of (a) one
15 percent or less of the votes received by the candidate who received the
16 highest number of votes for the office at an election in which more than
17 five hundred total votes were cast or (b) two percent or less of the
18 votes received by the candidate who received the highest number of votes
19 for the office at an election in which five hundred or less total votes
20 were cast, then such candidate shall be entitled to a recount. Any losing
21 candidate may waive the ~~his or her~~ right to a recount by filing a written
22 statement with the Secretary of State, election commissioner, or county
23 clerk with whom such candidate ~~he or she~~ made his or her filing. All
24 expenses of a recount under this section shall be paid by those political
25 subdivisions involved in the recount.

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

31 (3) Recounts for candidates who filed with the Secretary of State

1 shall be made on the fifth Wednesday after the election and shall
2 commence at 9 a.m. The Secretary of State shall inform each election
3 commissioner or county clerk of the names of the candidates for which the
4 board of state canvassers deems a recount to be necessary.

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

11 (5) The Secretary of State, election commissioner, or county clerk
12 shall notify all candidates whose ballots will be recounted of the time,
13 date, and place of the recount. Candidates whose ballots will be
14 recounted may be present or be represented by an agent appointed by the
15 candidate.

16 (6) The procedures for the recounting of ballots shall be the same
17 as those used for the counting of ballots on election day, except that
18 any election commissioner or county clerk shall have the option to
19 recount the ballots manually by hand count. The recount shall be
20 conducted at the county courthouse, except that if vote counting devices
21 are used for the counting or recounting, such counting or recounting may
22 be accomplished at the site of the devices. Counties counting ballots by
23 using a vote counting device shall first recount the ballots by use of
24 the device. If substantial changes are found, the ballots shall then be
25 counted using such device in any precinct which might reflect a
26 substantial change.

27 Sec. 7. Original sections 32-1118 and 32-1119, Reissue Revised
28 Statutes of Nebraska, and sections 32-101, 32-103, and 32-1041, Revised
29 Statutes Cumulative Supplement, 2022, are repealed.

30 Sec. 8. Since an emergency exists, this act takes effect when
31 passed and approved according to law.