

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:

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.