

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 561

Introduced by Stinner, 48; Schilz, 47.

Read first time January 21, 2015

Committee:

1 A BILL FOR AN ACT relating to irrigation districts; to amend sections
2 46-101, 46-102, 46-109, 46-110, 46-111, 46-115, 46-116, 46-117,
3 46-151, 46-179, 46-185, 46-1,145, and 46-1,160, Reissue Revised
4 Statutes of Nebraska; to name the Irrigation District Act; to define
5 and redefine terms; to provide procedures for determining
6 eligibility to vote and for conducting elections by mail; to change
7 provisions relating to elections; to harmonize provisions; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 46-101 (1) Sections 46-101 to 46-1,163 shall be known and may be
4 cited as the Irrigation District Act.

5 (2) Whenever a majority of the electors owning land or holding
6 leasehold estates, or who are entrymen of government lands, in the manner
7 and to the extent hereinafter provided in the Irrigation District Act, in
8 any district susceptible to one mode of irrigation from a common source
9 and by the same system of works, desire to provide for the irrigation of
10 the same, they may propose the organization of an irrigation district
11 under the act provisions of sections 46-101 to 46-128, and when so
12 organized, each district shall have the power conferred by law upon such
13 irrigation district.

14 Sec. 2. Section 46-102, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 46-102 (1) For purposes of the Irrigation District Act:

17 (a) Elector means The term elector as used in sections 46-101 to
18 46-1,111 shall include any resident of the State of Nebraska, owning not
19 less than fifteen acres of land, or who is an entryman of government
20 land, within any irrigation district or proposed irrigation district, or
21 any resident of the State of Nebraska holding a leasehold estate in not
22 less than forty acres of state land within such irrigation district for a
23 period of not less than five years from the date at which such elector
24 seeks to exercise the elective franchise; and Provided, however, when

25 (b) Residence means (i) that place in which a person is actually
26 domiciled, which is the residence of an individual or family, with which
27 a person has a settled connection for the determination of his or her
28 civil status or other legal purposes because it is actually or legally
29 his or her permanent and principal home, and to which, whenever he or she
30 is absent, he or she has the intention of returning, or (ii) the place
31 where a person has his or her family domiciled even if he or she does

1 business in another place.

2 (2) If an elector resides outside of the irrigation district, the
3 elector shall be considered an elector in the division of the irrigation
4 district in which his or her land is situated or, if the elector is the
5 owner of land in more than one division of the irrigation district, the
6 elector and resides without the district, he shall be considered an
7 elector in the that division of the district in which the majority of his
8 or her land is situated.

9 (3) In the case of land owned or leased by joint tenants, each joint
10 tenant who is a resident of the State of Nebraska is an elector and
11 entitled to vote if the total acreage owned or leased per joint tenant is
12 equal to or exceeds the minimum acreage requirements of subsection (1) of
13 this section.

14 (4) In the case of land owned or leased by tenants in common, each
15 tenant who is a resident of the State of Nebraska is an elector and
16 entitled to vote if the total acreage owned or leased per tenant is equal
17 to or exceeds the minimum acreage requirements of subsection (1) of this
18 section.

19 (5) In the case of land owned or leased by a corporation, limited
20 liability company, limited liability partnership, joint venture, or other
21 legal entity which meets the minimum acreage requirements of subsection
22 (1) of this section, the entity shall designate a shareholder, member, or
23 partner of the entity who is a resident of the State of Nebraska to act
24 as the elector on behalf of the entity. The entity shall identify its
25 elector-designee in writing to the secretary of the board of directors of
26 the irrigation district not less than thirty days prior to an irrigation
27 district election.

28 (6) In the case of land owned or leased under a life tenancy, each
29 remainderman who is a resident of the State of Nebraska is an elector and
30 entitled to vote if the total acreage owned or leased per remainderman is
31 equal to or exceeds the minimum acreage requirements of subsection (1) of

1 this section.

2 (7) In the case of land held by a buyer in possession pursuant to a
3 land-purchase contract when the total acreage under the land-purchase
4 contract meets the minimum acreage requirements of subsection (1) of this
5 section and the buyer in possession is a resident of the State of
6 Nebraska and is responsible for paying the real property taxes and the
7 irrigation fees and assessments, the buyer in possession is the elector.

8 (8) In the case of land owned or leased by a trust which meets the
9 minimum acreage requirements of subsection (1) of this section, the
10 trustee shall designate a trustor, beneficiary, or trustee of the trust
11 who is a resident of the State of Nebraska to act as the elector on
12 behalf of the trust. The trust shall identify its elector-designee in
13 writing to the secretary of the board of directors not less than thirty
14 days prior to an irrigation district election.

15 (9) In the case of a pending estate of a deceased elector involving
16 land which meets the minimum acreage requirements of subsection (1) of
17 this section, the duly appointed personal representative of the estate
18 who is a resident of the State of Nebraska shall act as the elector on
19 behalf of the estate.

20 (10) Prior to formation of an irrigation district, if two or more
21 persons claim conflicting rights to vote on the same acreage, the
22 election commissioner or county clerk shall determine the party entitled
23 to vote. In such cases, the determination of the election commissioner or
24 county clerk shall be conclusive. After formation of an irrigation
25 district, if two or more persons claim conflicting rights to vote on the
26 same acreage or any other conflict arises regarding the qualification of
27 an elector, the secretary of the board of directors of the irrigation
28 district shall determine the party entitled to vote. The secretary's
29 determination shall be conclusive. If a claim involves the secretary of
30 the board, the board of election for the affected irrigation district
31 precinct shall determine the party entitled to vote. In such cases, the

1 determination of the board of election shall be conclusive.

2 Sec. 3. Section 46-109, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 46-109 (1) Except as otherwise provided in subsections (2) and (3)
5 of this section, the ~~The~~ county board shall also make an order dividing
6 the irrigation district into three divisions as nearly equal in size as
7 may be practicable, which shall be numbered first, second, and third, and
8 one director shall be elected for each division. ~~; Provided, that~~

9 (2) After formation of an irrigation district, in districts
10 comprising over twenty-five thousand acres, the electors thereof may
11 determine by a majority vote to increase the number of directors in any
12 multiple of three up to nine, whereupon the district may be divided into
13 as many divisions as there are directors agreed upon. One-third of the
14 number of directors so elected shall retire each year, and the order of
15 their retirement may be agreed upon by the directors of the district, and
16 successors shall be elected in the manner provided for the election of
17 directors in other districts. The election for the increased number of
18 directors shall be called upon a petition signed by twenty percent of the
19 electors of the district presented to the then board of directors.

20 (3) After formation of an irrigation district, in districts
21 comprising less than fifteen thousand acres, upon the majority vote of
22 the board of directors, the question of whether the divisions in the
23 irrigation district may be eliminated and the subsequent election of the
24 directors conducted on an at-large basis may be submitted to the
25 electors. The divisions in the district shall be eliminated and the
26 directors elected on an at-large basis only upon the affirmative vote of
27 two-thirds of the electors of the district.

28 Sec. 4. Section 46-110, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 46-110 (1) After dividing the proposed irrigation district into
31 divisions, the ~~The~~ county board shall ~~then~~ give notice of an election to

1 be held in such proposed district, for the purpose of determining whether
2 or not the same shall be organized under the Irrigation District Act
3 ~~provisions of sections 46-101 to 46-128~~. Such notice shall describe the
4 boundaries as established and shall designate a name for such proposed
5 district. The notice shall be published for at least three weeks prior to
6 such election in a newspaper of general circulation in the county; and if
7 any portion of such proposed district lies within another county or
8 counties, then the notice shall be published in a newspaper of general
9 circulation ~~published~~ within each of such counties. The notice shall
10 include the contents of the ballots to be cast and the date, time, place,
11 and manner of the election, with instructions and deadlines to request
12 and cast a ballot by mail. The ballot require the electors to cast
13 ~~ballots which~~ shall contain the words Irrigation district Yes, or
14 Irrigation district No, or words equivalent thereto; and also the
15 names of persons to be voted for to fill various elective offices
16 ~~hereinafter prescribed in the Irrigation District Act.~~

17 (2) No person shall be entitled to vote at any election held under
18 the Irrigation District Act unless he or she is qualified as an
19 ~~provisions of sections 46-101 to 46-1,111 unless he shall be a qualified~~
20 elector as provided in section 46-102. For any election under the
21 Irrigation District Act, status as an elector shall be established by a
22 record date designated by the election commissioner or county clerk for
23 initial organization of the irrigation district or designated by the
24 secretary of the board of directors for all other elections. The record
25 date shall not be more than thirty days prior to the election. After such
26 record date, a person may be allowed to vote when such person establishes
27 his or her status as an elector to the satisfaction of the election
28 commissioner or county clerk for initial organization of the district or
29 to the satisfaction of the secretary of the board of directors for all
30 other elections. The determination of the election commissioner, county
31 clerk, or secretary of the board of directors, as the case may be, shall

1 be conclusive.

2 Sec. 5. Section 46-111, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 46-111 (1) Irrigation district elections shall be conducted in
5 accordance with the Irrigation District Act.

6 ~~(2) Such election shall be conducted in accordance with the general~~
7 ~~election laws of the state, including all provisions of law authorizing~~
8 ~~voting by mail.~~ The county board shall meet on the second Monday next
9 succeeding any irrigation district such election or next succeeding the
10 deadline for casting ballots in an irrigation district election by mail
11 and canvass the votes cast at the election or by mail. If thereat; and if
12 upon such canvass of the election for the formation of the district it
13 appears that at least a majority of all votes cast are Irrigation
14 district Yes, the county board shall by an order entered on
15 its minutes, declare such territory duly organized as an irrigation
16 district, under the name and style therefor designated, and shall declare
17 the persons receiving, respectively, the highest number of votes for such
18 several offices to be duly elected to such offices. The county board
19 shall cause a copy of such order, duly certified, to be immediately filed
20 for record in the office of the county register of deeds of each county
21 in which any portion of such lands are situated, and shall ~~must~~ also
22 immediately forward a copy thereof to the clerk of the county board of
23 each of the counties in which any portion of the district may lie; and no
24 county board of any county, including any portion of such district,
25 shall, after the date of the organization of such district, allow another
26 district to be formed including any of the lands of such district,
27 without the consent of the board of directors thereof. From and after the
28 date of such filing, the organization of such district shall be complete,
29 and the officers thereof shall be entitled to immediately enter upon the
30 duties of their respective offices, upon qualifying in accordance with
31 law, and shall hold such offices respectively until their successors are

1 elected and qualified. For the purpose of the election ~~above provided~~ for
2 the formation of the district, the county board shall establish one or
3 more election precincts in the proposed district, and define the boundary
4 or boundaries thereof, which may thereafter be changed by the board of
5 directors of such district.

6 Sec. 6. Section 46-115, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 46-115 (1) Fifteen days before any election which is not held by
9 mail under the Irrigation District Act provisions of sections 46-101 to
10 46-1,111, subsequent to the organization of the irrigation district, the
11 secretary of the board of directors shall cause notice to be published in
12 a newspaper of general circulation in each county in which the irrigation
13 district lies. The notice shall include the date, time, place, and manner
14 posted in three public places in each election precinct, of the time and
15 place of holding the election. The secretary , and shall also post a
16 general notice of the same in the office of the board, which shall be
17 established and kept at some fixed place to be determined by the board,
18 specifying the polling places, if any, of each precinct of the irrigation
19 district.

20 (2) Each year the board of directors of an irrigation district shall
21 determine whether to hold the subsequent regular election of the
22 irrigation district by mail. The board of directors may determine to hold
23 any other election by mail under the Irrigation District Act if the
24 decision to hold the election by mail is made at least forty-five days
25 prior to the date set for such election. The secretary of the board of
26 directors shall, at least thirty days prior to the date set for the
27 election, mail to the last-known post office address of each elector a
28 ballot which lists the names of the candidates and gives instructions and
29 the deadlines to return the ballot. The secretary shall publish notice of
30 the election by mail in a newspaper of general circulation in each county
31 in which the irrigation district lies. The notice shall include

1 instructions and the deadlines for requesting a ballot and instructions
2 and the deadlines for casting ballots by mail. The notice shall also
3 include the time and place designated for processing and counting the
4 ballots cast by mail.

5 (3) Prior to the time for posting the notices, the board of
6 directors shall appoint three residents ~~must appoint~~ from each precinct,
7 ~~from the electors thereof,~~ one clerk and two judges, who shall constitute
8 a board of election for such precinct. If the board of directors fails to
9 appoint a board of election, ~~or the members appointed do not attend at~~
10 the opening of the polls on the morning of election or at the time and
11 place for processing and counting the ballots cast by mail, as the case
12 may be, the electors of the precinct present at that hour may appoint the
13 board, ~~or supply the place of an absent member thereof.~~ The board of
14 directors must, in its order appointing the board of election, designate
15 the hour and place in the precinct where the election must be held or the
16 time and place for processing and counting the ballots cast by mail, as
17 the case may be. ~~All provisions of law authorizing voting by mail shall~~
18 ~~apply to all irrigation district elections.~~

19 Sec. 7. Section 46-116, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 46-116 (1) One of the judges shall be chairperson ~~chairman~~ of the
22 ~~election~~ board of election and may (a 1) administer all oaths required in
23 the progress of an election under the Irrigation District Act ~~,~~ and (b 2)
24 appoint judges and clerks, if during the progress of the election or
25 processing and counting ballots cast by mail, as the case may be, any
26 judge or clerk ceases to act. Any member of the board of election, or any
27 clerk thereof, may administer and certify oaths required to be
28 administered during the progress of an election or the processing and
29 counting of ballots cast by mail, as the case may be. Before opening the
30 polls or processing and counting ballots cast by mail, each member of the
31 board of election must take and subscribe to an oath to faithfully

1 perform the duties imposed upon him or her by law. Any elector of the
2 precinct may administer and certify such oath. ~~The~~

3 (2) For elections other than those conducted by mail, the polls must
4 be opened at 8 a.m. ~~;~~ on the morning of the election and be kept open
5 until 6 p.m. ~~;~~ of the same day, except that ~~;~~ ~~Provided,~~ in districts
6 embracing twelve thousand acres or less, the polls may, by direction of
7 the board of directors, be opened at 1 p.m. ~~;~~ and be kept open until 5:30
8 p.m. ~~;~~ of the same day.

9 Sec. 8. Section 46-117, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 46-117 (1) Elections under the Irrigation District Act, together
12 with the ballots cast thereat, shall be certified by the boards of
13 election for the precincts to the board of directors of the irrigation
14 district within three days after the election or the deadline for casting
15 ballots by mail.

16 (2) No lists, tally paper, or certificate returned from any election
17 shall be set aside or rejected for want of form if it can be
18 satisfactorily understood. The board of directors must meet at its usual
19 place of meeting on the first Monday after each election and canvass the
20 returns. If at the time of meeting the returns from each precinct in the
21 district in which the polls were opened or ballots were mailed have been
22 received, the board of directors must then and there proceed to canvass
23 the returns; but if all the returns have not been received the canvass
24 must be postponed from day to day until all the returns have been
25 received ~~;~~ or until six postponements have been had. The canvass must be
26 made in public and by opening the returns and estimating the vote of the
27 district for each person voted for and declaring the result thereof.

28 Sec. 9. Section 46-151, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 46-151 The cost and expense of purchasing and acquiring property and
31 constructing the works and improvements ~~herein~~ provided for in the

1 Irrigation District Act , shall be wholly paid out of the construction
2 fund, or in the bonds of the irrigation ~~such~~ district at their par value,
3 after having first advertised the same for sale as provided in section
4 46-1,100, and having received no bids therefor of ninety-five percent or
5 upwards of their face value. In case such bonds or the money raised by
6 their sale is insufficient for the purposes for which the bonds were
7 issued, additional bonds may be issued, after submission of the question
8 at a general or special election to the electors ~~qualified voters~~ of the
9 district. In case of the issuance of additional bonds, the lien for taxes
10 for the payment of the interest and principal of such issue shall be a
11 subsequent lien to any prior bond issue. However, the provisions of this
12 section shall not apply where the cost and expense of purchasing and
13 acquiring property and constructing the works and improvements ~~herein~~
14 provided for in the Irrigation District Act are covered by contract
15 between the district and the United States. In lieu of the issuance of
16 additional bonds, the board of directors may provide for the completion
17 of the irrigation system of the district by the levy of an assessment
18 therefor in the same manner in which levy of an assessment is made for
19 the other purposes provided in the Irrigation District Act sections
20 ~~46-101 to 46-1,111~~.

21 Sec. 10. Section 46-179, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 46-179 If the assent ~~aforsaid~~ of the holders of the bonds is filed
24 and entered of record as provided in section 46-178 ~~aforsaid~~, and if
25 there are objections presented by any person showing cause ~~as aforsaid~~
26 which have not been withdrawn, then the board of directors may order an
27 election to be held in the irrigation district to determine whether an
28 order shall be made excluding such lands from the district as mentioned
29 in the resolution. The notice of such election shall describe the
30 boundaries of all the lands which it is proposed to exclude, and such
31 notice shall be published for at least two weeks prior to such election

1 in a newspaper of general circulation ~~published~~ within the county where
2 the office of the board of directors is situated; and if any portion of
3 such territory to be excluded lies within another county or counties,
4 then such notice shall be so published in a newspaper of general
5 circulation ~~published~~ in each of such counties. Such notice shall require
6 the electors to cast ballots which shall contain the words For exclusion,
7 or Against exclusion, or words equivalent thereto. Such election shall
8 otherwise be conducted in accordance with sections 46-115 to 46-118 ~~the~~
9 ~~general election laws of the state; Provided, no particular form of~~
10 ~~ballot shall be required.~~

11 Sec. 11. Section 46-185, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 46-185 Whenever a majority of the assessment payers, representing a
14 majority of the number of acres of irrigable land within any irrigation
15 district, ~~shall~~ petition the board of directors to call a special
16 election, ~~for the purpose of submitting to the qualified~~ electors of such
17 irrigation district a proposition to vote on the discontinuance of such
18 irrigation district and a settlement of its bonded and other
19 indebtedness, ~~it shall be the duty of the board of directors shall to~~
20 call an election, setting forth the object of the same, and ~~to~~ cause a
21 notice of such election to be published in some newspaper of general
22 circulation in each of the counties in which the district is located, ~~and~~
23 ~~in which a newspaper is published,~~ for a period of thirty days prior to
24 such election, setting forth the time and place for holding such election
25 in each of the voting precincts in the district, ~~and~~ ~~and~~ shall also cause a
26 written or printed notice of such election to be posted in some
27 conspicuous place in each of the voting precincts. The board of ~~It shall~~
28 ~~also be the duty of the directors shall to~~ provide ballots to be used at
29 such election, ~~on which shall be written or printed the words For~~
30 discontinuance Yes, and For discontinuance No. The election
31 shall otherwise be conducted in accordance with sections 46-115 to

1 ~~46-118. The ballots shall be placed in the hands of the proper election~~
2 ~~officers in the several voting precincts of such district prior to the~~
3 ~~opening of the polls on the day of such election; and the election shall~~
4 ~~be conducted in all respects in the same manner as provided by law for~~
5 ~~the election of officers of the district. The return of the election,~~
6 ~~together with the ballots cast thereat, shall be certified by the several~~
7 ~~election boards of such district to the board of directors within three~~
8 ~~days from and after the election, which board shall, on or before the~~
9 ~~third day after the election, canvass such returns and declare the result~~
10 ~~of such election, which result shall be at once recorded in the records~~
11 ~~of the district board.~~

12 Sec. 12. Section 46-1,145, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 46-1,145 If such contract provides for payments to be made extending
15 for a period of more than one year from the date of making the contract,
16 the board of directors of such irrigation district shall submit the
17 contract to the electors ~~legal voters~~ of the district at any general
18 election, or at a special election called therefor for the approval or
19 disapproval of the contract. ~~If a special election is called for such~~
20 ~~purpose the notice of election, conduct of the election and canvass of~~
21 ~~votes shall so far as practicable be the same as elections held for the~~
22 ~~purpose of voting upon the issuance of bonds.~~ The ballots at the election
23 shall have printed thereon For approval of contract for water supply, and
24 Against approval of contract for water supply. The notice of the election
25 need not give the entire contract but shall be sufficient if it states
26 ~~shall state~~ in a general way the substance of the proposed contract. The
27 election shall otherwise be conducted in accordance with sections 46-115
28 to 46-118. If a majority of the electors ~~voters~~ that vote on the
29 proposition vote for approval of the contract, the board of directors
30 shall enter into the contract and shall thereafter, at the time the other
31 taxes of the district are levied, levy a tax on the taxable property of

1 the district sufficient to pay the amount due and to become due on the
2 contract before the next annual levy in the district.

3 Sec. 13. Section 46-1,160, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 46-1,160 The board of ~~It shall be the duty of~~ the directors of the
6 irrigation districts to be merged shall ~~to~~ provide ballots to be used at
7 such election. ~~The ballots shall be placed in the hands of the public~~
8 ~~election officers in the several voting precincts of each district prior~~
9 ~~to the opening of the polls on the day of such election, and the election~~
10 ~~shall be conducted in all respects in the same manner as provided by law~~
11 ~~for the election of directors of the districts.~~ The return of the
12 election, together with the ballots cast thereat, shall be certified by
13 the ~~election~~ boards of election of such districts to the persons who will
14 serve as the board of directors of the merged district if the merger is
15 approved, within three days after the election or within three days after
16 the deadline to submit ballots by mail, as the case may be, which board
17 shall, on or before the third day after the election, canvass such
18 returns and declare the result of such election, which result shall be at
19 once recorded by the secretary of the board of directors in the records
20 of the district boards and certified to the county clerk. The election
21 and the return thereof shall otherwise be conducted in accordance with
22 sections 46-115 to 46-118.

23 Sec. 14. This act becomes operative on January 1, 2016.

24 Sec. 15. Original sections 46-101, 46-102, 46-109, 46-110, 46-111,
25 46-115, 46-116, 46-117, 46-151, 46-179, 46-185, 46-1,145, and 46-1,160,
26 Reissue Revised Statutes of Nebraska, are repealed.