

Checks and Balances in Nebraska: Post-Election Day Process

American elections serve as a model for the world, thanks to our rigorous system of checks and balances and our neighbors serving as election workers faithfully carrying out those duties.

Working in teams made up of people from both parties, poll workers and election officials count, canvass, and audit votes — whether they are cast in-person or by mail. These election workers verify voters' identities. They inspect ballots. They resolve errors. They confirm that every legal ballot is counted as voters intended them.

When these checks and balances are complete, then the final phase of our election process happens: certification. This is the straightforward step in the process where election officials declare the winners. The multiple layers of checks and balances involved in the casting, counting, canvassing, and audit stages ensure that results are accurate prior to the final stage of certification.

This memo details the safeguards specific to the counting and canvassing processes and describes how county and state certification must occur following all of the checks and balances earlier in the election process. For greater detail about verifying mail ballot applications and ballots and a detailed timeline, please visit the rest of our series on checks and balances in Nebraska elections.

Importantly, this is nonpartisan educational research intended for 501(c)(3)-compliant purposes only. It is *not* to be used for any partisan, political, or electioneering activities by any organization.

Counting: Technology and Bipartisan Oversight Work to Triple-Check Results for Accuracy

Nebraska law mandates specific processes for counting early votes and Election Day votes. Each of these processes requires participation by a team of bipartisan election officials and includes equipment testing and periodic reconciliation of results.

Quality-Tested Technology Leads to Trustworthy Results

Ballots can be counted using automatic tabulation equipment at each polling location or at a central counting location. County election officials may not use optical-scan ballots or voting systems unless they are approved by the secretary of state.¹ Before an automatic tabulation device may be used for counting votes in an election, it must undergo at least three independent tests to verify its accuracy. The testing process must include: 1) the election commissioner or county clerk; 2) the chief deputy election commissioner or a registered voter affiliated with a party other than the commissioner or clerk; and 3) the person who installed the software or the person in charge of operating the device.²

¹ Neb. Rev. Stat. § 32-1041

² Neb. Rev. Stat. § 32-1049

Voter Challenges Ensure Only Eligible Voters Cast Ballots

Nebraska law allows any election official or registered voter to challenge the eligibility of a voter whom they suspect may be ineligible.^{3, 4}

Voters facing a challenge due to their citizenship status must provide information about their place of birth and the nature of their citizenship (native-born, naturalized, etc.) or provide naturalization paperwork.⁵ Voters challenged due to their residence or age must answer questions verifying their eligibility under oath.⁶ As long as the challenged voter complies with these requirements, polling place officials must allow them to vote.⁷

Both Parties Participate Throughout a Transparent Process

Nebraska law requires equally-balanced bipartisan teams to count all ballots (early voting and Election Day). Additionally, each political party may appoint a watcher to observe the counting at each counting location.⁸

Each county appoints a counting board for early voting that must consist of a balanced number of members from the political parties and can also include unaffiliated voters.⁹ The early voting counting board may begin processing and verifying early ballots on the second Friday before Election Day, but may not begin tabulation until 24 hours before polls open on Election Day.¹⁰ If the counting board processes ballots prior to the time tabulation can begin, then accepted and rejected ballots are stored in separate sealed containers.¹¹ No results can be released until polls close on Election Day.

Counties may choose to count Election Day votes at precinct polling locations or at a centralized location.¹² In either case, the election commissioner or county clerk designates at least two members of the counting board to act as a resolution board to resolve questions about the legality of votes to be counted. The members of the resolution board must be of an equal number from different political parties. Issues can only be resolved by a unanimous vote of the resolution board, and failure to reach unanimity results in the rejection of any vote in question.¹³

Recounts and Audits Verify the Accuracy of Automatically Tabulated Results

To further ensure the accuracy of automatically-tabulated results, Nebraska law provides one of the most rigorous systems for automatic recounts of close elections of any state. Election officials must conduct an automatic, full recount for any race: 1) in which more than 500 total votes were cast and the margin of victory was 1% or less; and 2) in which 500 or fewer total votes were cast

³ Neb. Rev. Stat. § 32-926

⁴ Neb. Rev. Stat. § 32-927

⁵ Neb. Rev. Stat. § 32-928

⁶ Neb. Rev. Stat. §§ 32-929; -930

⁷ Neb. Rev. Stat. § 32-932

⁸ Neb. Rev. Stat. § 32-1013

⁹ Neb. Rev. Stat. § 32-1027

¹⁰ *Id.*

¹¹ *Id.*

¹² Neb. Rev. Stat. § 32-1012

¹³ Neb. Rev. Stat. § 32-1015

and the margin of victory was 2% or less.¹⁴ Losing candidates may also request recounts in races with wider margins of victory, but will be subject to paying the costs.¹⁵

Additionally, the secretary of state can require a countywide or state-level audit of election procedures when needed to confirm the accuracy of results and adherence to state election laws.¹⁶

Canvassing: A Ministerial Duty

Canvassing is the process of compiling vote totals reported in returns from throughout a jurisdiction. In Nebraska, canvassing occurs at the county and state level.

County Canvass: Bipartisan Process Open to the Public

The election commissioner or county clerk appoints two or more registered voters to the county canvassing board, which also includes the commissioner or clerk. Like other Nebraska election processes, the canvassing board must be balanced between the political parties and may include unaffiliated voters.¹⁷

The election commissioner or county clerk must post notice of the time and location of the county canvassing meeting at least 24 hours before it begins.¹⁸ The canvassing meeting can occur at any time after early ballots have been counted and provisional ballots have been verified and counted. The canvassing board may correct any obvious errors in vote totals, but must note any correction on the appropriate precinct sign-in register, precinct list of registered voters, and the official summary of votes cast. The board must also attach a letter of explanation signed by all members of the board to each set of records where a correction was made.¹⁹

Once the board completes the canvass and verifies the accuracy of the vote totals, the election commissioner or county clerk will prepare an abstract of votes for transmission to the secretary of state.²⁰

State Canvass: State Officials Complete “Ministerial” Duty

The board of state canvassers, consisting of the governor, secretary of state, auditor of public accounts, state treasurer, and attorney general, performs the state canvass.²¹ This meeting is [generally held at the state capitol](#) and is open to the public for comment. The board authorizes the secretary of state to open the county abstracts of votes to allow board members to sign them and to affix the state seal. The board compiles and tabulates statewide vote totals based on the results reported in the county abstracts and determines from the compiled results the candidates receiving the highest number of votes.²²

¹⁴ Neb. Rev. Stat. § 32-1119

¹⁵ Neb. Rev. Stat. § 32-1121

¹⁶ Neb. Rev. Stat. §§ 32-202; -203

¹⁷ Neb. Rev. Stat. § 32-1028

¹⁸ Neb. Rev. Stat. § 32-1031

¹⁹ *Id.*

²⁰ Neb. Rev. Stat. § 32-1034

²¹ Neb. Rev. Stat. § 32-1037

²² Neb. Rev. Stat. § 32-1038

Nebraska law explicitly directs that the duty of the board of state canvassers to canvass the votes is “ministerial in nature.”²³

Certification: The Voters Have Spoken

Once canvassing is complete, winning candidates receive a certificate of election (or nomination during primary elections). For county, city, or village offices that are determined by the county canvass, the election commissioner or county clerk prepares the certificate and delivers it to the winning candidate no later than the sixth Monday after Election Day.²⁴ For races canvassed at the state level (other than presidential electors), the secretary of state delivers the certificate no later than 40 days after Election Day.²⁵

Once the state canvass determines the presidential candidate who received the most votes statewide and in each individual congressional district, the governor delivers certificates to the two at-large presidential electors pledged to the candidate who won the statewide vote and the congressional district presidential electors pledged to the candidate who received the most votes in each respective district.²⁶ The electors will convene at 2 p.m. on the first Tuesday after the second Wednesday in December at the location designated by the governor to cast their votes for president and vice president.²⁷

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²³ Neb. Rev. Stat. § 32-1037

²⁴ Neb. Rev. Stat. § 32-1033

²⁵ Neb. Rev. Stat. § 32-1040

²⁶ Neb. Rev. Stat. §§ 32-713; -1038

²⁷ Neb. Rev. Stat. § 32-713