

# ELECTIONS.

## CHAPTER 109.

[Sub. for S. B. No. 88—House Committee on Elections.]

### PRIMARY ELECTION.

AN ACT Providing for the Selection of Candidates for Election by Popular Vote, and Relating to Their Nomination and the Perpetuation of Political Parties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. OBJECTS.] It is the intention of this act to purify and reform the methods by which organized political parties shall make nominations of candidates for the several public offices, to perpetuate and strengthen political parties by eliminating therefrom the evils hereby sought to be corrected, and to secure to each individual member and delegate of such party an absolute freedom and independence in the expression of his preferences relating to nominations by such parties, and to prevent and prohibit the use and influence of the methods similar to that known as the unit rule, and this statute shall be so construed as to give force and effect to this expressed intention.

§ 2. WHEN HELD, WHO NOMINATED.] On the Tuesday following the third Monday of June of each year during which occurs a general election, there shall be held, in lieu of caucuses and conventions, a primary election in the various voting precincts of this state for the nomination of candidates for the following offices, to be voted for at the ensuing general election, viz: County officers, members of the legislative assembly, county commissioners, and city officers; and also for the election of delegates to the state and judicial district conventions as herein provided.

For special elections for the officers enumerated herein, the nomination shall be made as otherwise provided by law.

§ 3. PETITION OF CANDIDATES, CONTENTS, AUDITOR'S DUTY.<sup>1</sup> Every candidate for a member of the legislative assembly shall, not more than thirty nor less than fifteen days prior to said primary election, present to the county auditor of the county in which such legislative district shall be situated, and if such legislative district shall be composed of two or more counties, then in that event to the county auditor of each of said counties, a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of ten per cent of the total vote cast for the candidate of the party with which he affiliates, receiving the greatest number of votes for

the same position at the last general election; provided, however, that in no case shall more than one hundred names be required. Each name on the petition shall be that of a legal voter and be subscribed under a certified party heading.

Upon receipt by the county auditor of such petition, and when accompanied by the following affidavit, he shall place the applicant's name upon the primary election ballot of his party, as hereinafter provided.

Said affidavit may be substantially as follows:

STATE OF NORTH DAKOTA,

COUNTY OF..... ss.

I,.....being duly sworn, depose and say that I reside in the county of....., and state of North Dakota; that I am a qualified voter therein and a .....; that I am a candidate for nomination to the office of ..... to be chosen at the primary election to be held on ..... 19...., and I do hereby request that my name be printed on the primary election ballot as provided by law as a candidate of the party for said office.

Subscribed and sworn to before me this ..... day of ..... 19....

.....

Notary Public.

§ 4. PETITION, HOW SIGNED, FEES AND HOW DISPOSED OF.] Every candidate for a county or district office shall, not more than thirty days nor less than twenty days prior to any primary election, present to the county auditor a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of five per cent of the total vote cast for the candidate of the party with which he affiliates for the same position at the last general election; provided, however, that in no case shall more than three hundred names be required.

Each name on the petition shall be that of a qualified voter and be subscribed under a certified party heading.

Each signer of a nomination paper shall sign but one paper for the same office; he shall add his residence, with the street number, if any, and the date of the signing.

Upon the receipt of such petition by the county auditor and the payment to him of an amount equal to two per cent of the annual salary of the office to which he aspires, (excepting candidates for state senator who shall pay thirty dollars, and candidates for legislative representative who shall pay ten dollars), and in no case less than five dollars, excepting candidates for county commissioners, surveyor and coroner who shall pay three dollars, and the candidates for county constables and county justices of the peace who shall pay one dollar, as provided in this act, and when accompanied by an affidavit as provided in section 3 of this act, he shall place the name of such applicant upon the primary election ballot of his party as hereinafter provided.

For the purpose of this act, candidates for the office of sheriff shall pay the same fee as candidates for the office of county auditor.

The money so received by the county auditor shall be turned over by him to the county treasurer to be covered into the general fund.

§ 5. CONTINUOUS LIST OR AGGREGATE.] The petitions required in sections 3 and 4 of this act may be one continuous list of names under the proper political title or principle or there may be a number of such petitions using the same title, giving the aggregate of names required.

§ 6. NOMINATION WITHOUT PETITION.] A candidate may be nominated by having his name written on, or by printed stickers placed in a blank line left for that purpose underneath the group in each official position.

§ 7. DUTY CHAIRMAN STATE CENTRAL COMMITTEE. ELECTION STATE DELEGATES, HOW.] It shall be the duty of the chairman of the state central committee of each party or principle entitled to make nominations as such under the provisions hereof, to certify to the county auditor of each county on or before the first day of May of each year during which state officers may be elected, the number of delegates which have been apportioned to such county as the representation to which such county is entitled in the succeeding state convention of such party or principle, and such county auditor shall thereafter include in the notice of the primary election to be held under the provision of this act a notice of the election at such primary election of the number of delegates apportioned to said county as aforesaid, and thereafter the same proceedings shall be had relating to the election of delegates to state conventions as is provided herein for the nomination of candidates for county offices; provided, that candidates for the office of delegates to the state convention shall not be required to pay any fee to become candidates as such delegates; and provided, further, that a petition for the nomination of candidates for the office of delegate to the state convention shall contain at least ten per cent of the vote cast at the last general election for the candidate of such party or principle for the office of governor in such county; and provided, further, that such petition may contain the names of one or more candidates for office of delegate to the state convention.

§ 8. STATE CONVENTION, MANNER OF CONDUCTING. VACANCIES, HOW FILLED.] The delegates for the state convention chosen by each party or principle in the manner provided in the preceding section shall meet at a time and place designated by the state central committee of each of said parties or principles, respectively, and shall nominate by majority vote the candidates of said party or principle for the respective state offices to be filled at the succeeding general election held in this state, including members of congress and presidential electors.

The state central committee shall provide the manner of filling vacancies occurring at the time of holding the convention in the delegations of the several counties, but no person shall be chosen except a resident of the county in which such vacancy occurs.

All nominations by such convention shall be made by secret ballot and not otherwise. The use or observance or enforcement of the practice commonly known as the unit rule is hereby strictly forbidden and any person who shall cast or receive or cause to be cast or received or counted any vote whatever in violation of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be punished as provided by law for misdemeanors.

In case of any vacancy by death, resignation or otherwise, in any of the nominations made by such state convention the state central committee of such party shall have power to fill such vacancy.

No promise of appointment of or preference to or for any position in the federal or state service shall be given to any delegate to the state or district convention to be holden under this act, and no inducement direct or indirect shall be offered to any such delegate for his vote or influence as such in connection with the nomination of any person, by such convention; and any person violating this provision shall be deemed guilty of a misdemeanor and on conviction thereof be fined in any such sum not less than \$50, or more than \$500, and imprisonment in the county jail not less than ten days or more than one year.

§ 9. WHO QUALIFIED AS CANDIDATES.] All persons nominated in accordance with the provisions of this act shall be eligible and qualified as candidates to be voted for at the ensuing general election.

§ 10. BALLOTS, HOW PROVIDED, HOW ENTITLED, FORM OF, HOW MARKED.] The primary election and primary election ballot shall be provided for, arranged and conducted and all expenses paid as now provided by law for general elections, except as otherwise provided for in this act.

There shall be separate ballots for each party or principle and they shall all be of the same size, texture and color.

The ballot shall be entitled "primary election ballot."

The names of all aspirants for nomination of each political party or principle for the different offices shall be arranged in separate groups in their order, on separate ballots under a proper political designation, leaving one or more blank lines or spaces below each group of names on which may be written or placed a name or a printed sticker attached for the nomination of the candidate. No squares shall be left at the head of the ballot.

At the head of each ballot shall be placed the title of the political party or principle that it represents.

At the left of each group shall be placed the title of the office followed by a bracket indicating the number of names in such group. Above each group there shall be a space in which shall be printed the number of names in that group to be voted for as follows: "Vote for.....name (or names) only."

The voter shall place his cross (X) in the square following the name to the right of every candidate he desires to vote for.

The judges and inspectors of election when handing a ballot to a voter shall inform him that he must vote for the candidates of the political party such ballot represents only and the voter shall call for the ballot representing the party or principle with which he affiliates and he shall receive such ballot and no other.

§ 11. DUTY OF VOTER.] Any citizen otherwise eligible by law affiliating or representing the principles enumerated in the national platform of the following parties are eligible to nomination under this act: The republican party, the democratic party, or any party designation that cast five per cent of the votes cast for governor at the last general election and it shall be unlawful for any person to call for or vote a ballot at the primary election herein provided for except a ballot representing the party, or principle, with which he affiliates and any person who has reason to believe that the ballot called for by the voter does not represent the party or principle with which said voter affiliates may challenge such vote, and he shall not be entitled to cast his ballot unless he makes and files with the inspector of such primary election an affidavit to the effect that such ballot represents the political party with which he affiliates.

§ 12. VACANCY, HOW FILLED.] Should a vacancy occur by resignation, death or otherwise where there is only one aspirant for such office, in any office for which candidates are to be nominated in this act, or should there be no applicant for such office before printing the primary election ballots such vacancy may be filled by the regularly constituted committee of the party in which such vacancy occurs, and no petition or fee shall be required therefor.

§ 13. PRIMARY BALLOTS, HOW PREPARED.] The primary election ballots of each party or principle shall be prepared, unless otherwise provided in this act, as prescribed in section 491 of the revised codes of 1899.

§ 14. ARRANGEMENT OF NAMES.] The names of candidates for each office upon the sample and official ballot shall be arranged alphabetically according to surnames.

§ 15. JUDGES OF DISTRICT COURT, HOW NOMINATED.] Between the first day of May and the first day of June of each year during which an election shall be held for the purpose of electing, among other officers, judges of the district court in the several districts of this state it shall be the duty of the state central committee of each party or principle entitled to make nominations under the provisions hereof to designate a time and place at which a convention shall be held for the purpose of nominating candidates of such party or principle for the office of judge of the district court of each judicial district. Notice of the time and place so designated shall be given in such manner as the state central committee shall determine and at the time and place so designated the persons elected as delegates to the state convention of such party or

principle in such year, from the several counties composing each judicial district, shall meet in convention and nominate by majority vote the candidate of such party or principle for the office of the judge of the district court. The vote by which such nominations shall be made shall be by secret ballot. The chairman and secretary of such convention shall immediately issue a certificate of the nomination showing the name and residence of the person so nominated, and forthwith transmit the same to the secretary of state. Such convention shall have power to provide the method by which any vacancy shall be filled by reason of the death, resignation or failure of the person so nominated to accept or otherwise.

§ 16. DUTY OF SECRETARY OF STATE.] The secretary of state shall between the first day of April and the fifteenth day of May in such year, direct and cause to be delivered to the county auditor of each county a notice specifying the officers to be nominated under this act, specifying the several officers to be nominated in such county at the next primary election.

The auditor to whom such notice is delivered, shall cause notice of the same to be given as provided in section 512 of the revised codes of 1899.

§ 17. ELECTION LAW APPLICABLE.] Except as herein otherwise provided the following sections of chapter 8 of the political code of 1899 entitled "elections" are hereby made applicable to primary elections and primary election ballots under this act, to wit: Sections 480, 481, 483, 484, 485, 486, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 505, 510, 513, 514, 515, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 529, 531, 533, 535, 536, 537, 545, 547, 548, 549, 556, 557, 558, 559, 560, 561 and 562.

§ 18. TALLY SHEETS AND BOOKS.] Two tally books or two sets of tally sheets shall be provided for each political party or principle, having candidates to be voted for at each voting precinct, the same to be furnished by the county auditor, at the same time and in the same manner that the poll books and ballots are furnished. The names of the candidates shall be placed on the tally sheets in the order in which they appear on the official sample ballots and in each case shall have the proper party designation at the head thereof.

§ 19. POLLS OPEN AND CLOSE, WHEN. CANVASS OF VOTE, HOW MADE.] The polls shall be opened at nine o'clock a. m. and shall remain open continuously until four o'clock p. m.

When the polls are closed the judges and inspectors of such primary election shall open the ballot boxes, count the votes and compare the same with the clerk's list and should any irregularities appear they shall proceed as now provided by law.

When the ballots compare with the clerk's list they shall proceed to canvass and place those of each political party in separate piles.

The tally of the votes shall be separate for each political designation or principle and so returned by the judges and inspectors of election, giving the full vote for each candidate.

The men's and women's vote shall be kept separately and so returned by the judges.

The county canvassing board shall aggregate those for each of the candidates voted for.

§ 20. JUDGES MAKE STATEMENT.] The judges of such primary election in each precinct shall make a statement on blanks to be provided for that purpose which shall be subscribed to by them and filed in the office of the county auditor with the returns as follows: They shall contain the names of all persons voted for at the primary election with the number of votes cast for each candidate and for what office.

A separate statement shall be made for each political party or principle.

§ 21. DUTY OF CLERKS.] The clerks of primary election shall keep a list of names of all persons voting at such primary election, and shall return one list as now required and one tally sheet that shall be a part of the records, and deliver the other list to the board of registration within thirty days following any primary election.

No registration of votes shall be required under this act to vote at any primary election.

The poll lists so kept at the primary election and delivered to the boards of registration shall take the place of the first registration of the voters now required, and notice only shall be given of the second day of registration which shall be held and conducted as now provided and no other shall be required to vote at the general election following

§ 22. CANVASSING BOARD, WHO COMPOSED OF.] The county canvassing board shall be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners and the chairmen of the county committee of the two political parties that cast the highest vote for governor at the preceding general election.

The members of said board shall meet in the county auditor's office in the court house, at ten o'clock a. m., on the eighth day after any primary election, and shall proceed, after taking the usual oath of office, to open and publicly canvass the primary election returns made to the county auditor.

Any three members of said board shall constitute a quorum and are authorized to make the canvass herein provided and to certify to the results thereof.

§ 23. DUTY OF CANVASSING BOARD.] The canvassing board shall make and prepare a statement the same to be signed by said board and filed in the office of the county auditor as follows:

First. A statement containing the names of all the candidates voted for at the primary election, with the number of votes received by each and for what office or position, said statement to be made as to each political party or principle separately.

Second. A statement of the names of the persons or candidates of each political party who are nominated, towit: Those persons or

candidates of such political party or principle who received the highest number of votes for the respective office, and where there is more than one person to be elected to a given office at the ensuing general election there shall be included in said statement of nomination the names of so many candidates of such party receiving the next highest number of votes for that office as there are persons to be elected to such office at said ensuing general election, including delegates to the state convention. Said statement shall in like manner be made separately as to each political party.

Third. A statement of the whole number of electors registered and the number of ballots cast, men's and women's separately, at such primary election.

Fourth. It shall be the duty of the county auditor upon the completion of the canvass to mail or deliver in person, to each candidate so nominated for any county or district office, including delegates elected to the state convention, a notice of such fact except as to delegates, and that his name will be put upon the official ballot except as otherwise provided. He shall, also, cause a copy of the findings of said board to be published in a newspaper at the county seat, if such there be.

§ 24. DUTY OF AUDITOR.] It shall be the duty of the county auditor of each county under his official seal, except as provided in section 26 of this act, immediately upon the completion of the canvass as provided by section 23 hereof, to issue certificates of nomination for the persons of each political party or principle having the highest number of votes, for the members of the legislative assembly, which certificate of nomination shall be forwarded without delay to the secretary of state by registered mail.

§ 25. LEGISLATIVE DISTRICTS OF MORE THAN ONE COUNTY.] When two or more counties are embraced in one legislative district, the respective county auditors shall attend at the office of the county auditor of the senior county of such district, within fifteen days after a primary election, and in conjunction with the auditor of the senior county shall compare the votes cast in the several counties comprising such district; and such auditor shall immediately make out certificates of nomination for the persons of each political party or principle having the highest number of votes in such district for the members of the legislative assembly as provided in section 24 of this act, which certificate of nomination shall be forwarded without delay to the secretary of state by registered mail, by the county auditor of the senior county who shall give notice in writing to all the members of the legislative assembly nominated in such district.

§ 26. When a vacancy occurs by death or resignation of any aspirant for nomination before the primary election ballots are printed in legislative districts containing more than one county, the members of the county central committees of the party in which such vacancy occurs, of the counties of which such district is composed, shall meet and by majority vote may fill such vacancy, and by a certificate



of nomination notify the county auditors of the several counties of which such district is composed. Should a nomination be so made the auditors of such counties shall place the name on the primary election ballots where the vacancy exists.

Should a vacancy occur in a legislative office in a county composed of more than one district, or in a commissioner's district, then the county central committee of the party in which such vacancy occurs shall meet and fill such vacancy. On receipt of a certificate of nomination from such committee, the county auditor shall place the name of such nominee upon the primary election ballot where such vacancy exists.

§ 27. The provisions of this act shall apply to cities in this state containing a population of five thousand or more according to the last government census.

§ 28. Primary elections for the nominations of all municipal officers shall be held on the first Tuesday of March of each year and conducted the same as city elections.

Nominations shall then be made of all officers, city and ward, where the terms of office expire at the municipal election following.

§ 29. Thirty days prior to such election it shall be the duty of the city auditor or recorder to give public notice thereof by two publications following in the official paper of the city, and by posting three notices in each ward, in conspicuous places specifying the officers to be nominated at the primary election following, giving the date of such election and the title and term of such office.

§ 30. All aspirants for nomination shall, not more than twenty nor less than ten days prior to such primary election, present or have presented to the city auditor or recorder a petition and affidavit as required in sections 3 and 4 of this act; provided, that the fee required to be paid shall be five dollars for nominations at large and two dollars for nominations in wards, which shall be paid to the city treasurer and a receipt taken therefor; provided, further, that the petition required shall contain the names of at least five per cent of the votes cast for mayor at the preceding election for officers at large, and five per cent of such vote cast in each ward shall be required to place a name on the primary election ballot for nominations in such ward.

§ 31. It shall be the duty of the city auditor or recorder to prepare the primary election ballots as provided in this act and deliver the same as now provided by law.

§ 32. The city council shall compose the canvassing board, and shall meet within five days after any primary election and canvass the votes as required in subdivisions first and second of section 23 of this act and make returns of same as herein provided.

§ 33. When the result of such election is announced it shall be the duty of the city auditor or recorder to notify the candidates declared nominated by written notice thereof and by publishing the same in the official paper of the city, one week prior to the municipal election.

§ 34. All the provisions of chapter 5 of the penal code, in so far as the same relates to crimes against the elective franchise, are hereby made applicable to elections held pursuant to the provisions of this act.

§ 35. COMMITTEES UNCHANGED, WHO MAY BE.] Every state, county and city committee of each political party now eligible under the provisions of this act, shall remain the regularly constituted committee of the respective parties until succeeded as provided for in this act.

§ 36. CENTRAL COMMITTEES, HOW CONSTITUTED.] Between the first day and tenth day of August of each year following a primary election for the election of delegates to a state convention, it shall be the duty of the persons elected as delegates to the state convention of each party or principle in such year, to meet at the county seats in each county, respectively, at a time and place to be designated by the chairman of the county central committee (ten days' notice whereof shall be given by mail to each of said delegates by such chairman of the county central committee) and elect a county central committee representing such party or principle which committee shall be composed of such number as said delegates to the state convention shall at said time and place determine, and the members of such committee shall be so selected as to give as nearly as practicable equal representation to each portion of the county containing an equal number of electors who shall be members of said party or principle.

No candidate shall be a member of such committee.

Each member shall retain such position until his successor is chosen.

Every member so selected shall be a legal voter.

Such members shall meet within five days after their election and organize by selecting a chairman, a secretary and a treasurer from among their members and shall adopt rules and modes of procedure.

Vacancies shall be filled by a majority of the committee, by appointment from the district in which such vacancy exists.

§ 37. USAGE AND CUSTOMS PREVAIL.] It is not the intention hereof to destroy or impair the organization of any party or principle now existing or hereafter to exist, therefore, each of such parties or principles, and each and all of the state, county, and other committees thereof shall possess all of the ordinary powers and authority heretofore established by the usages and customs of such parties not inconsistent with any of the provisions hereof.

§ 38. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved Febraury 21, 1905.