



***LR 335 Report: A Comparison of the Recommendations  
of the 2014 Presidential Commission on Election  
Administration and Current Nebraska Law***

*Prepared by Nebraskans for Civic Reform*

*Presented to Members of the Nebraska Legislature  
Government, Military and Veterans Affairs Committee  
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## ***Introduction***

The Presidential Commission on Election Administration (PCEA), created by Executive Order 13639, conducted public hearings over the course of six months and consulted with state and local election officials, academic experts, and organizations associated with voting or election administration. From these conversations the PCEA promulgated the 2014 Report and Recommendation central to the quality of voter participation and confidence in the democratic process. Pursuant to LR 335 and at the request of its introducer, Senator Matt Hansen, Nebraskans for Civic Reform undertook the task of evaluating those recommendations included in the 2014 PCEA Report and the current Nebraska election administration. NCR's research included an evaluation of current Nebraska statutes, current Nebraska Administrative Code, discussions with election officials and consultation with other organizations associated with Nebraska elections.

### ***A Brief History of the Commission and Members.***

In 2013, President Obama established the Presidential Commission on Election Administration. This bi-partisan commission was created to identify best practices in election administration and to make recommendations to improve the voting experience.

The PCEA was co-chaired by Robert F. Bauer, former White House Counsel to President Obama and general counsel to the Democratic National Committee, and Benjamin L. Ginsberg, national counsel to the 2000 and 2004 Bush-Cheney presidential campaigns and the Romney for President Campaign, as well as counsel to the Republican Governors Association. Both have a wide range of experience related to election

law. In addition, the PCEA is comprised of “distinguished election administrators and representatives of successful customer service-oriented businesses who bring experience drawn from the private and public sectors to help identify best practices in election administration”.<sup>1</sup>

### ***Executive Summary***

A full comparison chart of recommendations and current Nebraska election administration practices can be found in Appendix A, this chart provides a succinct snapshot of the LR 335 study. The main take-away from the LR 335 study is that current Nebraska election administration lacks uniformity and transparency in the administration of elections. Many of the recommendations for polling place management are the current practice of Nebraska counties, however these voluntary management procedures are the result of individual election official evaluation and not the result of a uniform standard. Many of the self-audits performed by the county election officials are undertaken voluntarily, therefore there is no official reporting or publication of these audits for the public to review. Furthermore, where directives are provided by the Secretary of State’s office, such as poll worker training, these directives are not codified in statute or administrative code and counties report that they alter and add to the resources provided, creating an issue of uniformity in how elections are handled in Nebraska.

With the implementation of online voter registration this year and participation in Interstate Voter Crosscheck Program, Nebraska meets many of the basic recommendations of the PCEA, however improvements can be made including joining the recommended ERIC program and applying voter registration information requirements to

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<sup>1</sup> About the Commission”, Retrieved from the Presidential Commission on Election Administration website, <http://www.supportthevoter.gov/the-commission/>. Last visited:

online public assistance programs. While the Secretary of State conducts audits of tabulation machines, these audits are voluntarily and not conducted after each election and are published as a press release, instead of being disclosed in a common data format as recommended by the PCEA. Furthermore, Nebraska has not adopted the federal Voluntary Voting System Guidelines developed by the US Election Assistance Commission as recommended by the PCEA concerning voting machines.

Finally, the PCEA recommends the involvement of minority voters, like disabled voters or bilingual voters, in the promulgation of election procedures and involvement in election administration. The PCEA recommends the creation of an advisory board. Nebraska currently has a committee of such voters, as required by the Help America Vote Act, but the scope of this committee is limited to the distribution of HAVA funds and will be decommissioned next year.

### ***Comparison of Recommendations and Current Nebraska Law and Practice***

#### **I. VOTER REGISTRATION: LIST ACCURACY AND ENHANCED CAPACITY**

Recognizing the importance of having accurate and manageable voter rolls, the Presidential Commission on Election Administration (PCEA) developed several recommendations to enhance the accuracy and capacity of registration lists.

#### **Recommendation #1: *States should adopt online voter registration***

First, the PCEA recommends that states adopt online voter registration. On September 22, 2015, Nebraska became the 24<sup>th</sup> state to implement online voter registration, and electors can now register

through an online portal featured on the Secretary of State’s website. In addition, if an individual has not moved and needs to renew his or her license, he or she can register to vote or update his or her voter registration through the Department of Motor Vehicles’ website. However, if the individual has had a change of address, he or she cannot update his or her license or register to vote through the DMV’s website. A best practice provided by the PCEA is to facilitate online registration through web portals from other agencies and outside groups. Although Nebraskans can currently register at the two previously mentioned sites, there is no requirement to have portals on other agency sites to register online to vote. There is a requirement for voter registration services to be available at specific government agencies,<sup>2</sup> but it is unclear as to whether or not this requirement extends to the agency websites.

**Recommendation #2:** *Interstate exchanges of voter registration information should be expanded*

Second, the Commission recommends that interstate exchanges of voter registration information be expanded. A best practice for this recommendation is for states to join interstate programs that share data and synchronize voter lists so that states can come as close as possible to creating an accurate database of all eligible voters. The PCEA names two systems for registration crosschecks: the Interstate Voter Registration Crosscheck Program (IVRC) and the Electronic Registration Information Center (ERIC). Nebraska is currently one of

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<sup>2</sup> “Any office [...] that provides either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities must offer voter registration services. Armed Services recruitment offices must also provide voter registration services. National Voter Registration Act 9, §738g5 . The NVRA provides further that the states shall prescribe which agencies provide public assistance and thus fall under this statute. In Nebraska, agencies listed under Neb.Rev.Stat. §32-310(1) fall under the NVRA.

twenty-eight states<sup>3</sup> that are members of the IVRC, but it is not a member of ERIC. With the implementation of online voter registration, Nebraska may now be eligible to join the 13 states and the District of Columbia<sup>4</sup> that are already members of ERIC.

**Recommendation #3:** *States should seamlessly integrate voter data acquired through Departments of Motor Vehicles with their statewide voter registration lists*

Finally, the PCEA recommends that states should seamlessly integrate voter data acquired through Department of Motor Vehicles (DMV) offices and election offices. Due to the DMV's important role in registering voters, the Commission notes that the DMV can also contribute to the level of orderliness and efficiency of operation in each community's polling places on Election Day. §32-308 outlines the procedures that Nebraska DMV offices will implement by January 1, 2016. The Secretary of State's office and the DMV shall enter into an agreement to match information in the computerized statewide voter registration list with information in the data base of the DMV to verify the accuracy of the information provided on applications for voter registration. Then, the DMV, with assistance of SOS, shall prescribe a voter registration application which may be used to register to vote or change his or her address for voting purposes at the same time an elector applies for an original or renewal motor vehicle operator's license, an original or renewal state ID card, or a replacement thereof. Next, the DMV will develop a

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<sup>3</sup> Alaska, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, Washington, and West Virginia.

<sup>4</sup> Alabama, Colorado, Connecticut, D.C., Delaware, Louisiana, Maryland, Minnesota, Nevada, Oregon, Rhode Island, Utah, Virginia, and Washington.

process to electronically transfer application information received through this process. The PCEA notes that adopting online registration provides DMVs with a ready-made portal to facilitate seamless transmission of voter registration data to the election office.

## **II. IMPROVED MANAGEMENT OF THE POLLING PLACE**

### **a. Polling Place Location and Design**

The Presidential Commission of Election Administration (PCEA) lays out five requirements that must be met for a location to be used as a polling place.

- (1) Sufficient room to comfortably accommodate voters
- (2) Provide accessibility for voters with disabilities
- (3) Adequate infrastructure, i.e. capacity for appropriate levels of internet and telephone connection
- (4) Adequate parking
- (5) Reasonably located to the population of voters that it is intended to serve

Nebraska statutes codify some of the requirements recommended by the PCEA and others are considerations Nebraska election officials evaluate when assigning polling locations. No specific statute dictates a required square footage nor how many parking spots are required to be available, however most election officials have stated these issues are taken into consideration when deciding whether a site should be a polling place.

Several Nebraska statutes address the issue of accessibility, specifically for voters with disabilities. Neb.Rev.Stat. §32-906(3) requires that polling places chosen comply with those building guidelines promulgated by the State Fire Marshal that comply

with the federal Americans with Disabilities Act of 1990 (ADA) and the Fair Housing Act of 1968 (FHA). Furthermore, §32-907 specifically addresses voters with disabilities access to the polling location and the voting process. A polling place is required to comply with the ADA, however, under §32-907, a polling location may be chosen, even if it does not comply with the ADA, if modifications are made to provide temporary compliance on Election Day. An example of such modification is the construction and installation of a ramp entrance to the building. Currently the Nebraska Secretary of State's office reimburses for expenses incurred by the counties related to the upkeep and maintenance AutoMark voting machines via funds provided by the federal government under the Help America Vote Act (HAVA), but it does not appear the Secretary of State's office reimburses for expenses incurred by counties that must modify existing structures to make the polling site ADA compliant.

A polling place is required to be located within the boundaries of the precinct, however Nebraska law allows for a polling place to be outside of the precinct in two specific situations (1) there is no suitable structure to serve as a polling site within the precinct, and (2) multiple polling sites are held in the same building for one of the reasons proscribed in statute.<sup>5</sup> In short, current Nebraska law controlling polling place requirements reflect the PCEA recommendation and attempts to balance accessibility to the voter with flexibility for the county election official.

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<sup>5</sup> Neb.Rev.Stat. §32-906(2): When no suitable structure is available in the precinct, the county election official may designate a polling place outside the precinct; Neb.Rev.Stat. §32-904: Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons



Of those counties that responded to NCR's 2015 County Election Official Questionnaire, most reported using variables such as location, size, convenience, and the number of voters in precincts to determine whether or not to combine precincts into one polling location. Another factor was accessibility, especially the availability of accessible locations in small counties where only a few buildings may be ADA compliant. One county also responded that a major consideration was to balance the cost savings to taxpayers without causing inconvenience to voters.

**Recommendation #4:** *Schools should be used as polling places and, to address, any related security concerns, Election Day should be an in-service day*

In seeking to find suitable polling locations, the PCEA recommends utilizing schools as polling places<sup>6</sup>. Under current Nebraska law all public political subdivisions that receive state or federal funding must make themselves available for use as a polling place at no cost to the county.<sup>7</sup> No specific definition of “political subdivision” exists in Chapter 32, therefore the term “political subdivision” is interpreted to include a school district and thus property owned by this political subdivision would fall under §32-905 provision.<sup>8</sup>

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<sup>6</sup> About one third of Election Day voters nationwide in 2008 and 2012 voted in a school. PCEA Report, page 33.

<sup>7</sup> Neb.Rev.Stat. §32-905.

<sup>8</sup> While no definition for “political subdivision” exists within Chapter 32, numerous provisions within the chapter govern how school board districts are created, how vacancies are filled and how elections for such positions are run. Many of these provisions include the term political subdivision and thus it can be concluded that by their inclusion in these provisions that govern, school districts are themselves a political subdivision. Therefore, under §32-905,

Safety concerns are prevalent when schools are used as polling places as well as an issue of access where schools have installed secure access and limited entry onto school grounds.<sup>9</sup> In their recommendations, the Commission addresses this balance of safety and access by recommending Election Day be a teacher in-service day wherein students are not at the school. In Nebraska, the individual school districts determine their own academic calendar including which dates will be designated “in-service” days. It is unknown whether any Nebraska schools currently designate Election Day as an in-service date.<sup>10</sup>

**Recommendation #5:** *States should consider establishing vote centers to achieve economies of scale in polling place management while also facilitating voting at convenient locations*

The PCEA recommends the establishment of “vote centers” – a polling place at which any registered voter in the political subdivision holding the election may vote, regardless of the precinct in which the voter resides. These vote centers are typically located along common travel and commuting routes and serve the purpose of making voting more convenient and dispelling voter confusion on their proper precinct polling place. The PCEA recommends taking two key factors into consideration before implementing “vote centers”: (1) Whether the jurisdiction has sufficient staff and resources to accommodate vote centers, (2)

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buildings owned and operated by this subdivision, in short school buildings, must be available as polling places.

<sup>9</sup> [“Millard parents start petition to end public voting in schools”](#), Omaha World Herald, printed 9/28/2015. Last accessed 10/23/2015

<sup>10</sup> For the 2015-2016 academic calendar for Lincoln Public Schools and Omaha Public Schools neither school district designated an in-service day in November.

Whether such “convenient locations” exist in the jurisdiction to use for vote centers, (3) Whether the jurisdiction has sufficient public transportation.

In Nebraska, early voting is conducted in the “vote center” model wherein early voting for an individual, regardless of which precinct they are registered in, is available at the county election office. In addition, county election officials, with the approval of the Secretary of State, may designate an early voting location in addition to the county election office.<sup>11</sup> As for Election Day, in-person voting is available at an individual’s precinct polling place and by proxy at the county election office.<sup>12</sup>

#### **b. Management of Voter Flow**

The Presidential Commission on Election Administration (PCEA), utilizing the “Queuing theory”, examined the voting process to identify the potential causes of longer wait times. The “Queuing Theory” is typically applied in the scenario of industrial organization and credits the formation of lines to the arrival of large numbers of people at the same time, when there are too few points of service, and when the transaction time takes too long. Under an election scenario, these causes arise during check-in and when voters wait for the space in which they can fill out their ballot. Wait times in Nebraska, from entering into polling place to

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<sup>11</sup> Neb. Rev. Stat. §32-904; See also Nebraska Administrative Code, Title 432 Chapter 2, Early Voting Location Act.

<sup>12</sup> Individual voters who requested an early ballot may return their ballot to the county election office and individuals may have a proxy pick up a ballot from the county election office on Election Day. Neb.Rev.Stat. §32-943

submitting ballot, average about 3-5 minutes in 2014 and 10-15 minutes in 2012.<sup>13</sup>

In Nebraska, the process a voter must complete to receive a ballot is laid out in statute, with specific rules governing the conduct of election workers. The voter must give their name and address to the first member of the receiving board, who finds their name on the list of registered voters for that precinct. A second poll worker writes in the poll book the voter's name and the voter is then asked to write in the address and sign the poll book.<sup>14</sup> Upon completing these steps a voter is given a ballot by a third election worker with instructions on filling out the ballot and placing it in the secrecy sleeve. The voter then fills out their ballot in one of the privacy voting booths erected on site.<sup>15</sup> Where delays occur is usually the result of improper distribution of resources.

Election officials are required to provide the following resources to a polling site: (1) voting booths, (2) electronic voting machine, (3) ballot box, (4) ballot box lock and key, and (5) those supplies necessary to ensure convenience of voting.<sup>16</sup> Two statutory provisions address minimum ratios and what must be provided by election official to polling site. It is required that for every 100 registered voters 1 voting booth must be present – there is some discretion in non-statewide elections.<sup>17</sup> A minimum 1 electronic voting machine is required for every 500 registered voters.<sup>18</sup>

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<sup>13</sup> Nebraskans for Civic Reform Election Protection Reports: General Election 2012, General Election 2014

<sup>14</sup> Neb.Rev.Stat. §32-914

<sup>15</sup> Neb.Rev.Stat. §32-916

<sup>16</sup> Neb.Rev.Stat. §32-906(1)

<sup>17</sup> Neb. Rev. Stat. §32-906(2).

<sup>18</sup> Neb.Rev.Stat. §32-906(3)

**Recommendation #6:** *Jurisdictions should develop models and tools to assist them in effectively allocating resources across polling places*

County election officials determine the allocation of resources within their own jurisdiction with incredible discretion<sup>19</sup> in how the determination is made. The Secretary of State's office does not provide formulas or estimations to assist county officials in calculating how many ballots<sup>20</sup> or other resources.

Most Nebraska county clerks order ballots at 100 percent of registered voters or more for testing purposes.<sup>21</sup> Those counties that order less than 100 percent tend to overestimate, so they don't run out of ballots. County election officials also look at the state and local ballot issues as well as the type of election- presidential elections have higher turnout rates than midterm elections, for example. Cass County also provided an example of a local ballot issue which increased turnout in one precinct, so knowing the ballot is important. Provisional and absentee ballot orders tended to be based on prior election trends. Burt County specifically responded that they use power profile software along with eligible voter statistics.

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<sup>19</sup> *Wahlquist v. Adams County*, 94 Neb. 682 (1913) (The number of ballots to be printed is not a fixed and certain quantity and is subject in some degree to his discretion)

<sup>20</sup> Neb.Rev.Stat. §32-807: "shall print and deliver to each precinct or district in the county, city, or village an approximate number of ballots based upon what would appear sufficient at the time the ballots are to be printed". Factors to be taken into consideration include: (1) increases in registration, (2) early voting, (3) annexations, (4) changes in boundaries, (5) spoiled ballots, and any other factor that may influence the total number of ballots needed.

<sup>21</sup> 2015 County Election Official Questionnaire

While the voting check-in procedures are mandated by statute<sup>22</sup> and little can be done to make that process more efficient, several county officials are seeking to prevent long lines by increasing the number of voting booths available. When the polling site allows, county election officials are utilizing inexpensive table-top dividers as an alternative to the more expensive stand-up voting booths. Regardless of the method of increasing available voting booths, at the heart of the issue of proper allocation of resources on Election Day is accurate prediction of turnout.

The PCEA report gives two suggestions to increase accuracy:

- (1) Allocate resources based on data gathered in the critical three month period prior to an election,
- (2) Pretest ballots to gauge time it will take average voter to vote the ballot

Typically determinations of turnout are made six months out and include analysis of past turnout and historical pace of registration from past elections, however, the PCEA notes that many of the key factors that affect these numbers occur in the 3 months leading up to Election Day and thus election officials should remain flexible leading up to Election Day. While an accurate turnout prediction is necessary to anticipate number of ballots, estimating sufficient voting booths and election workers requires anticipating peak times and process times. The PCEA recommends testing the entire process from how long it takes to check-in a voter to how long it takes a voter to fill out the ballot. These times will give an election official an accurate idea of not just how many voting booths are required under statute (1 per 100 registered voters), but how many

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<sup>22</sup> Neb.Rev.Stat. §32-914

are realistically required to efficiently serve that individual precinct.

Several counties responded that either the county clerk themselves, their staff, or district or precinct inspectors visit polling places on Election Day to check the lines. This was less of a problem in smaller districts, some of whom responded that the polling place is just down the hall from their office in the courtroom, so they were readily available to check wait times or deal with problems.

In addition to proper allocation of resources, delays on Election Day can be avoided by providing sufficient information to voters on the voting process and ballot contents. The PCEA recommends the state provide information on voter registration deadlines, requirements for receiving a ballot, polling place location and who/what is on the ballot. Currently the Secretary of State is required to produce an election calendar by November 1<sup>st</sup> of the year preceding to the election year.<sup>23</sup> This calendar includes registration deadlines and is posted on the Secretary of State's website and re-posted by other county election officials. As for polling place locations, statutory provisions restrict how close to an election a county election official may move a polling location. Individual voters are informed of their polling location when they receive their confirmation card (or when their polling place is moved). Voters may visit the Secretary of State's website, find the Voter Information Center link, and then search for their polling place. Other counties also provide polling place search engines on their website. Efforts by Nebraska election officials to remind

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<sup>23</sup> Neb.Rev.Stat. §32-206

voters of the their polling place is minimal, but resources are available for voters seeking out such information.

The PCEA reports that log jams on Election Day occur when a voter must wait for an open space to fill out their ballot. Increasing voting booths is one solution. The other is to familiarize the voter with the ballot prior to Election Day. The PCEA report suggests sample ballots should be available to all voters no later than the beginning of in-person early voting or three weeks prior to an election. Currently Nebraska law requires that the sample ballot be published on only one regular issue of each paper not more than 15 days or less than 2 days before the day of election.<sup>24</sup> Nebraska's "not more than 15 days" publication requirement is roughly one week less than the suggested 3 weeks in the PCEA report and 20 days later than the 35 days prior when early voting begins in Nebraska.

It is possible for Nebraska voters to access sample ballots earlier than the required publication, but only if the county election official, in his or her judgment, determines that the published ballot will not be seen by the voters. In such a case, the county election official may print sample ballots earlier than the publication requirement date.<sup>25</sup> A "Notice of Election" is required

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<sup>24</sup> Neb.Rev.Stat. §32-803 requires a sample of official ballot be printed, in English and in any other language required pursuant to the Voting Rights Language Assistance Act of 1992, in one or more newspapers of general circulation in the county, city, or village as designated by the county election official.

<sup>25</sup> Neb.Rev.Stat. §32-804: Sample ballots may be printed on light red, light green or light pink paper and shall not be distributed less than 3 weeks nor more than 35 days before the election in an amount not to exceed ten percent of the total number of votes cast in such county, city, village immediately preceding general election.



to be printed earlier<sup>26</sup> than the sample ballot, however this notice does not contain the same information as a sample ballot.<sup>27</sup> In conclusion, Nebraska’s current requirements do not conform with the best practice of 3 weeks prior or at the start of early voting set forth by the PCEA. Nebraska authorizes county election official to print and distribute sample ballots earlier than the 15 day publication requirement, but this is up to the discretion of the election official – not a statewide requirement.

**Recommendation #7:** *Jurisdictions should transition to electronic poll books*

An informed voter can quicken the time it takes to fill out a ballot, however an issue still exists on the front end – voter check-in. The PCEA recommends a transition to electronic pollbooks to address this problem. An e-pollbook is an electronic version of the paper poll-book, a list of eligible voters in the relevant jurisdiction, i.e. county. Currently Nebraska has paper pollbooks, pre-printed list of registered voters in that specific precinct. In short, Nebraska’s current system stops short of what the PCEA recommends and thus fails to provide the same benefits as the e-pollbook, i.e. access to all registered voters in the county to assist voters at the wrong polling location or quickly search for the voter’s name.

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<sup>26</sup> Neb.Rev.Stat. §32-802: Notice is required to be printed in at least one newspaper designated by the county election official no later than forty days prior to the election.

<sup>27</sup> Notice of Election shall state (1) date of election, (2) hours polls open, (3) list all offices, candidates, and issues that will appear on ballot. The notice will not include the language of any amendment or referendum, but will simply state that amendments or referendums will be voted upon and that the Secretary of State will publish a copy of any title or text at a later date (required to be published once a week for the three weeks prior to Election Day). Neb.Rev.Stat. §32-802. A ballot contains the names of the candidates running for each position and the language of any referendum or proposed amendment.

**c. Poll Workers: Recruitment and Training**

*Recommendation #8: Jurisdiction should recruit public and private sector employees, as well as high school and college students to become poll workers*

Acknowledging the availability of retirees, and thus their preference to serve as poll workers, the PCEA recommends a focus on diversifying population pool from which election officials draw poll workers. Two practices found to be effective by the PCEA include recruitment of high school or college students and partnerships with public and private employers. The PCEA points to states that already allow high school students to serve as election workers, describing an incentive-based program wherein the student either receives class credit or the volunteering is used as a civic education tool.

The PCEA also recommends providing state statutory authorization to clearly set out state policy that protects those employees who wish to volunteer as election workers, but fear they will suffer penalties in the workplace. In addition to statutory protections for the employee, election officials should foster broad community support for election service by working with employers to create voluntary initiatives.

In Nebraska, poll workers can either be volunteers or appointed, in short drafted. The Secretary of State is responsible for collecting the names of those citizens interested in serving as volunteer election workers, but it is up to the county election official with how their office will fill open election worker positions, by

volunteer or appointments.<sup>28</sup> In Nebraska, youth ages 16 – 17 may serve as election workers<sup>29</sup>, a practice promoted by the Secretary of State’s “Youth Election Service”(YES). The YES program recruits and encourages eligible Nebraska high school students to serve as election workers and the chance to win a gift certificate for their service. There is no such program for college students.

Nebraska statutes do provide protection for those individuals who choose to serve on Election Day and those appointed to serve.<sup>30</sup> This provision ensures that an individual appointed to serve as an election worker “shall not be subject to discharge from employment, loss of pay, loss of overtime pay, loss of sick leave, loss of vacation time, the threat of any such action or any other harm or penalty<sup>31</sup>, provided the individual gives reasonable notice to their employer. A similar protection is provided in the following subsection where an individual is serving as an election worker but not appointed.

**Recommendation #9:** *States should institute poll worker training standards*

Within the report the PCEA strongly encourages states to establish statutorily required training regimens that is required for each election, suggesting online coursework to present a more intensive training that can include mechanisms for feedback and evaluation. There is no statutory provision that outlines a uniform standard for poll worker training. Current law requires

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<sup>28</sup> Neb.Rev.Stat. §32-235

<sup>29</sup> Neb.Rev.Stat. §32-235(5)

<sup>30</sup> Neb.Rev.Stat. §32-241

<sup>31</sup> Neb.Rev.Stat. §32-241(1)

only that the Secretary of State provide training for election commissioners, county clerks and other election officials in the conduct of elections, not standardize training for poll workers.<sup>32</sup> Current law does require the poll worker to attend training, but does not specify what that instruction entails and does not confirm uniformity across jurisdictions.<sup>33</sup>

Most counties obtain poll worker training material from the Secretary of State's office, and then modify them for each election, taking into consideration the type of election and any specific needs for their county.<sup>34</sup>

#### **d. Polling Place Management: Needs of Particular Communities of Voters**

**Recommendation #10:** *Election authorities should establish advisory groups for voters with disabilities and for those with limited English proficiency*

The Presidential Commission on Election Administration (PCEA) report recommends the establishment of advisory groups in order to:

- (1) Identify the needs of voters with disabilities or limited English proficiency

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<sup>32</sup> Neb.Rev.Stat. §32-202(2)

<sup>33</sup> Neb.Rev.Stat. §32-235(2): Each appointee shall, at the time fixed in the notice of appointment, report to the office or other location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as require by the Secretary of State and any other training deemed necessary by the county clerk.

<sup>34</sup> 2015 County Election Official Questionnaire

- (2) Receive assistance and advice from those in the community on how to meet those needs
- (3) Distribute information of resources available to those voters with accessibility needs
- (4) Provide feedback on the accessibility of polling places and sufficiency of training concerning poll worker interaction.

Currently no statute specifically requires the Secretary of State to create such advisory groups nor to consult with such advisory groups. An advisory group created to address implementation of the Help America Vote Act (HAVA) is currently meeting, but will be disbanded within the year. The HAVA committee included representatives from the disability community, Disability Rights Nebraska, college representative and minority representative. However this committee was limited in its counseling of the Secretary of State to provide assistance and counsel solely on the distribution and spending of HAVA dollars. Given that this committee was limited in its scope and will be disbanded in the coming year, Nebraska does not currently have an advisory committee as recommended by the PCEA.

**Recommendation #11:** *States and localities just adopt comprehensive management practices to assure accessible polling places*

PCEA report recommends local election officials evaluate every polling place under the guidelines published by the Department of Justice, but these guidelines go beyond physical accessibility. The PCEA report also suggests training be included for poll workers that addresses the accessibility of the poll workers to

voters with disabilities. Under current Nebraska law polling place accessibility is measured by its compliance with the Americans with Disabilities Act. Discussions with county election officials imply that proper placement of Automark machines and other issues of accessibility are addressed and handled in poll worker training. However, members of the disability community express frustration that these required policies are not always followed. In short, it appears Nebraska does not have a statewide comprehensive management policy to ensure accessibility at polling places and instead, beyond statutory requirements for polling locations, discretion in training and implementation is left to the individual counties and election workers.

**Recommendation #12:** *States should survey and audit polling places to determine their accessibility*

The PCEA recommends that the State should survey and audit polling places to determine their accessibility. The report points to Wisconsin's method as the best practice. In Wisconsin the Wisconsin Government Accountability Board performs a survey and audit wherein a questionnaire is sent out to election officials in addition to visiting a selection of polling places to observe. In Nebraska there is no statutory requirement that county election officials perform such audits, though many indicate they voluntarily undertake an audit similar in nature and aim. Many county election officials that responded to the 2015 questionnaire indicated that a representative of their office visits polling places on Election Day to check wait times, proper set-up and accessibility.

In addition, two non-profit organizations, Disability Rights Nebraska and Nebraskans for Civic Reform, conduct observation programs before and on Election Day that in part note a polling place's accessibility. These results are shared with the Secretary of State's office.

**Recommendation #13:** *Jurisdictions should provide bilingual poll workers to any polling place with a significant number of voters who do not speak English*

To address potential barriers throughout the voting process the PCEA report recommends recruiting and assigning bilingual poll workers to polling locations serving high minority populations. Where a language minority exceeds five percent of the voting population of a jurisdiction, the election materials provided and polling place assistance must be in that language, in addition to English.<sup>35</sup> However this protection is limited to those counties that fall under the five percent threshold and those with limited English proficiency in other areas do not receive assistance, therefore the PCEA recommends proactive efforts to address this issue. The report points to utilizing existing resources, for example an Election Administration Commission published glossary of election terminology translated into several languages, and deliberate recruitment from these communities, bilingual students and bilingual teachers as poll workers.

Currently in Nebraska, bilingual election materials are only required in the following counties: Colfax, Dakota, and Dawson.

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<sup>35</sup> Voting Rights Act, Sections §203 and §208

Only one county that responded to our survey, Colfax County, said that they have bilingual election workers and bilingual material. Cuming County responded that while they don't have bilingual workers, some students who volunteered during the Youth Election Service Program were bilingual. Platte County responded that other bilingual workers in the courthouse have helped with voter registrations and early in-person voters, but they don't have any bilingual workers in their election office.

**Recommendation #14:** *Jurisdictions should test all election materials for plain language and usability*

The PCEA recommends that states adopt “plain language” guidelines to assist entities in drafting election language. No such guidelines have been codified in statute in Nebraska and there is no requirement that election materials must be in plain language and usability.

### III. VOTING BEFORE ELECTION DAY

**Recommendation #15:** *States should expand opportunities to vote before Election Day.*

The Presidential Commission on Election Administration (PCEA) also recommends that states should expand opportunities to vote before Election Day, noting a best practice that states should not expand early voting while excessively reducing the resources available for Election Day. Currently, thirty-three states, including Nebraska, and



the District of Columbia,<sup>36</sup> allow any qualified voters to cast a ballot in-person during a designated period prior to Election Day with no required excuse or justification. In Nebraska, the local election official, with the approval of the Secretary of State, may establish early voting locations in addition to the county election office.<sup>37</sup> The average starting time for in-person early voting is 22 days prior to Election Day; Nebraska begins in-person early voting 30 days before any primary or general election. Twenty-two states and the District of Columbia also allow some form of weekend in person early voting, typically on a Saturday during the early voting election period.<sup>38</sup> Some of these states leave it up to county clerks or local election officials who may choose to allow weekend voting. In addition, seven states and the District of Columbia<sup>39</sup> permit voters to join a permanent absentee voting list. Once a voter opts in, he or she automatically receives an absentee ballot for all future elections. Nine states<sup>40</sup> allow permanent absentee voter status to individuals who meet specific criteria, such as permanently disabled voters, an illness that is diagnosed as permanent, or another challenge to reaching a physical polling location.

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<sup>36</sup> Alaska, Arizona, Arkansas, California, D.C., Florida, Georgia, Hawaii, Illinois, Kansas, Louisiana, Maryland, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Tennessee, Texas, Utah, and West Virginia allow in person early voting. Idaho, Indiana, Iowa, Maine, Minnesota, Montana, New Jersey, Ohio, Oklahoma, South Dakota, Vermont, Wisconsin, and Wyoming allow a voter to apply for an in person absentee ballot (without an excuse) and cast that ballot in one trip to an election official's office.

<sup>37</sup> 432 Neb. Admin. Code, Ch. 2, §001.01

<sup>38</sup> Absentee and Early Voting. (2015, February 11). Retrieved from the National Conference of State Legislatures website: <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

<sup>39</sup> Arizona, California, D.C., Hawaii, Minnesota, Montana, New Jersey, and Utah.

<sup>40</sup> Alaska, Delaware, Kansas, Massachusetts, Minnesota, Mississippi, Missouri, New York, and West Virginia.

In regards to voting by mail, the Commission endorses a best practice to adopt safeguards for mail balloting, including online tracking of absentee ballots so voters can verify the status of their ballot. Nebraska currently allows voters to view the status of their ballot to determine when their votes were counted.<sup>41</sup>

#### IV. MILITARY AND OVERSEAS VOTERS

**Recommendation #16:** *States should provide ballots and registration materials to military and overseas voters via their websites*

It is important to provide options for voters who may be outside of the United States to vote, despite their physical distance. The Nebraska Secretary of State’s website, [www.sos.ne.gov](http://www.sos.ne.gov), contains a link titled “Military Voters.” This link directs visitors to a page with information about the *Federal Post Card Application (FPCA)*, the *National Voter Registration Form*, and the *Nebraska Voter Registration Application*. The website clarifies that the FPCA is both a registration application and an early-voting application.

The web page also provides a link to the *Federal Write-In Absentee Ballot (FWAB)*, a form accepted in Nebraska for registration and voting in all federal, state and local elections. However, upon inspection the hyperlink takes you to a page that does not exist. Routine website maintenance but should be improved to provide accuracy and consistency for military and overseas voters. In addition, the Secretary of State’s election web page links to the Voter

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<sup>41</sup> <https://www.votercheck.necvr.ne.gov/VoterView/Home.do>

Information Center, wherein a voter may track their ballot. The web page offers contact information for the Secretary of State's office and a link to reach the Federal Voting Assistance Program 24 hours a day, but this link is invalid. Overall, the Secretary of State's website is helpful to voters who happen to be overseas or in the military and offers what is recommended by the PCEA, though failure to provide routine maintenance has led to broken links.

## V. GROWING CHALLENGES WITH ELECTION EQUIPMENT AND VOTING TECHNOLOGY

**Recommendation #17:** *The standard-setting and certification process for voting machines must be reformed*

In 2007, current Nebraska Secretary of State John A. Gale was a member of a 15-person committee, called the Technical Guidelines Development Committee, which advised the U.S. Election Assistance Commission in developing the *Voluntary Voting System Guidelines*. These guidelines serve to increase security requirements for voting systems as well as increasing access to them, particularly so individuals with disabilities are able to vote privately and independently. However, as of 2009, Nebraska is one of 20 states that do not utilize any of the federal requirements from the *Voluntary Voting Systems Guidelines* for the certification of voting systems. Neb.Rev.Stat. §32-1041 (2008) simply states that “any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk”. This provision is insufficient to be considered compliant with the Presidential Commission on Election Administration (PCEA) recommendation,

therefore Nebraska does not affirmatively provide for those security requirements envisioned by the PCEA.

**Recommendation #18:** *Audits of voting equipment must be conducted after each election, as part of a comprehensive audit program, and data concerning machine performances must be publicly disclosed in a common data format*

In a survey published by the National Association of Secretaries of State in 2007, Nebraska indicated that it does not require any type of post-election audit of its voting systems, and did not anticipate one being required within the next year.<sup>42</sup> However, following the 2008 general election, Secretary of State John A. Gale ordered an audit of election results in 17 randomly-selected precincts. This composes 1 percent of the state's precincts. The sample hand counts of results from this election confirm that Nebraska's voting tabulation equipment is extremely accurate, Gale reported in a press release.<sup>43</sup> Another audit was performed following the November 2012 general election,<sup>44</sup> and the 2014 primary election.<sup>45</sup> However, this performance of post-election audits is not codified in any statute in Nebraska. Of the 93 counties in Nebraska, 24 county clerks responded to a survey regarding their election processes, and of these 23 counties, 20 responded that they conducted some type of election audit. This includes visiting polling places to check for ADA compliance and running test ballots through tabulation machines. The majority of clerks who responded indicated that either themselves or a representative of their office, or an independent

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<sup>42</sup> [2007 National Association of Secretaries of State Survey](#)

<sup>43</sup> [Nebraska SOS Press Release \(2009\) - Election Audit](#)

<sup>44</sup> [Nebraska SOS Press Release \(2013\) - 2012 General Election Audit](#)

<sup>45</sup> [Nebraska SOS Press Release \(2015\) - Manual Audit](#)

outside party acting as an official inspector, will visit polling places on Election Day to observe wait times and notify the office of any problems they see. Counties reported using procedures developed by the Secretary of State's Office and the Election Systems and Software company through which Nebraska purchases voting equipment.

## VI. COLLECTION AND DISTRIBUTION OF ELECTION DATA

**Recommendation #19:** *Local jurisdictions should gather and report voting-related transaction data for the purpose of improving the voter experience*

The PCEA recommends local election officials utilize a variety of techniques and methods to measure and gather election data such as wait times, provisional ballots, etc. No Nebraska statute exists that requires such research, however many counties voluntarily take it upon themselves to study the efficiency of their election administration.

Counties who responded that they use district or precinct polling place inspectors have used the data gathered from these surveys to readjust the setup at the polling location and determine whether they need to adjust poll worker training in the future or purchase additional tools for the poll workers at the precinct location. However it does not appear that any of this data gathered is shared outside of the jurisdiction.

***Appendix A: Comparison Table of PCEA Recommendations and  
Nebraska Election Law***

***Appendix B: 2015 County Election Official Questionnaire – List of  
Respondents/Non-Respondents***

***Appendix C: 2015 County Election Official Questionnaire Responses***

LR 335 Report was created and presented by Nebraskans for Civic Reform. Inquiries or questions should be directed to NCR's Director of Voting Rights, Bri McLarty, J.D., by phone (402) 904-5191, or via e-mail at [bri.mclarty@nereform.org](mailto:bri.mclarty@nereform.org)