

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 349

Introduced by Lautenbaugh, 18.

Read first time January 15, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Election Act; to amend sections
2 32-101, 32-1301, 32-1302, 32-1303, 32-1304, 32-1306, and
3 32-1308, Reissue Revised Statutes of Nebraska; to change
4 provisions relating to recall; to require notification as
5 prescribed; to harmonize provisions; and to repeal the
6 original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-101 Sections 32-101 to 32-1551 and section 4 of this
4 act shall be known and may be cited as the Election Act.

5 Sec. 2. Section 32-1301, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-1301 For purposes of sections 32-1301 to 32-1309,
8 ~~filing clerk shall mean~~ and section 4 of this act:

9 (1) Filing clerk means the election commissioner or
10 county clerk for recall of ~~elected officers~~ officials of cities,
11 villages, counties, irrigation districts, natural resources
12 districts, public power districts, school districts, community
13 college areas, educational service units, hospital districts, and
14 metropolitan utilities districts;~~;~~

15 (2) Malfeasance in office means the knowing and
16 intentional commission by a public official of an unlawful or
17 wrongful act in the performance of the duties of such public
18 official which infringes on the rights of any person or entity;

19 (3) Misfeasance in office means the negligent performance
20 by a public official of the duties of such public official or the
21 negligent failure by a public official to perform a specific act
22 which is a required part of the duties of such public official;

23 (4) Nonfeasance in office means the knowing and
24 intentional failure by a public official to perform a specific act
25 which is a required part of the duties of such public official; and

1 (5) Official means an elected official of a political
2 subdivision or an elected member of the governing body of a
3 political subdivision listed in subdivision (1) of this section.

4 Sec. 3. Section 32-1302, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 32-1302 (1) Except for trustees of sanitary and
7 ~~improvement districts,~~ as otherwise provided in sections 31-786
8 to 31-793, any elected official of a political subdivision and
9 any elected member of the governing bodies of cities, villages,
10 counties, irrigation districts, natural resources districts,
11 public power districts, school districts, community college areas,
12 educational service units, hospital districts, and metropolitan
13 utilities districts may be removed from office by recall pursuant
14 to sections 32-1301 to 32-1309 and section 4 of this act.
15 Elected officials may be recalled only for malfeasance in office,
16 misfeasance in office, nonfeasance in office, or conviction of
17 a crime involving an act of dishonesty or a false statement. A
18 ~~trustee of a sanitary and improvement district may be removed from~~
19 ~~office by recall pursuant to sections 31-786 to 31-793.~~

20 (2) If due to reapportionment the boundaries of the area
21 served by the official or body change, the recall procedure and
22 special election provisions of sections 32-1301 to 32-1309 and
23 section 4 of this act shall apply to the registered voters within
24 the boundaries of the new area.

25 (3) The recall procedure and special election provisions

1 of such sections shall apply to members of the governing bodies
2 listed in subsection (1) of this section, ~~other than sanitary and~~
3 ~~improvement districts,~~ who are elected by precinct, district, or
4 subdistrict of the political subdivision. Only registered voters of
5 such member's precinct, district, or subdistrict may sign a recall
6 petition or vote at the recall election. The recall election shall
7 be held within the member's precinct, district, or subdistrict.
8 When an elected member is nominated by precinct, district, or
9 subdistrict in the primary election and elected at large in
10 the general election, the recall provisions shall apply to the
11 registered voters at the general election.

12 (4) The recall procedure and special election provisions
13 shall apply to the mayor and members of the city council
14 of municipalities with a home rule charter notwithstanding any
15 contrary provisions of the home rule charter.

16 Sec. 4. One or more registered voters proposing the
17 recall of an official shall submit to the filing clerk a
18 typewritten statement, in concise language of sixty or fewer
19 words, alleging facts which if true establish malfeasance in
20 office, misfeasance in office, nonfeasance in office, or conviction
21 of a crime involving an act of dishonesty or a false statement,
22 for which recall of the official is sought. Such voter or voters
23 shall be deemed to be the principal circulator or circulators of
24 the recall petition.

25 Sec. 5. Section 32-1303, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 32-1303 (1) A petition demanding that the question of
3 removing an elected official ~~or member of a governing body listed~~
4 ~~in section 32-1302~~ be submitted to the registered voters shall be
5 signed by registered voters equal in number to at least thirty-five
6 percent of the total vote cast for ~~that~~ such office in the last
7 general election, except that (a) for an office for which more than
8 one candidate is chosen, the petition shall be signed by registered
9 voters equal in number to at least thirty-five percent of the
10 number of votes cast for the person receiving the most votes for
11 such office in the last general election, (b) for a member of a
12 board of a Class I school district, the petition shall be signed
13 by registered voters of the school district equal in number to at
14 least twenty-five percent of the total number of registered voters
15 residing in the district on the date that the recall petitions are
16 first ~~checked out~~ procured from the filing clerk by the principal
17 circulator or circulators, and (c) for a member of a governing body
18 of a village, the petition shall be signed by registered voters
19 equal in number to at least forty-five percent of the total vote
20 cast for the person receiving the most votes for that office in the
21 last general election. The signatures shall be affixed to petition
22 papers and shall be considered part of the petition.

23 (2) Petition circulators shall conform to the
24 requirements of sections 32-629 and 32-630.

25 (3) The petition papers shall be procured from the filing

1 clerk. The filing clerk shall notify the Secretary of State when
2 initial petition papers are issued under this section. Prior to the
3 issuance of such petition papers, an affidavit shall be signed and
4 filed with the filing clerk by ~~at least one registered voter.~~ Such
5 ~~voter or voters shall be deemed to be the principal circulator or~~
6 ~~circulators of the recall petition.~~ The affidavit shall state the
7 name and office of the official sought to be removed, shall include
8 ~~in typewritten form in concise language of sixty words or less~~
9 ~~the reason or reasons for which recall is sought,~~ the statement
10 of allegations filed pursuant to section 4 of this act, and shall
11 request that the filing clerk issue initial petition papers to the
12 principal circulator or circulators for circulation.

13 (4) The filing clerk shall notify the official sought
14 to be removed by any method specified in section 25-505.01 or,
15 if notification cannot be made with reasonable diligence by any
16 of the methods specified in section 25-505.01, by leaving a copy
17 of the affidavit at the official's usual place of residence and
18 mailing a copy by first-class mail to the official's last-known
19 address. ~~If the official chooses, he or she may submit a defense~~
20 ~~statement in typewritten form in concise language of sixty words~~
21 ~~or less for inclusion on the petition.~~ Any such defense statement
22 shall be submitted to the filing clerk within twenty days after
23 the official receives the copy of the affidavit. Within twenty
24 days after the official receives the copy of the affidavit, he
25 or she may submit a typewritten defense statement, in concise

1 language of sixty or fewer words, for inclusion on the petition
2 or he or she may file an action in the district court having
3 jurisdiction over the county in which such official resides to
4 challenge the sufficiency of the allegations in the statement filed
5 by the principal circulator or circulators. The court shall presume
6 the allegations in the statement are true and construe them in the
7 light most favorable to the principal circulator or circulators and
8 shall determine, without hearing and without cost to any party,
9 whether the allegations in the statement establish the existence
10 of malfeasance in office, misfeasance in office, nonfeasance in
11 office, or conviction of a crime involving an act of dishonesty or
12 a false statement. The clerk of the district court shall notify
13 the filing clerk and all parties of the court's decision within
14 five days after the decision is rendered. If the allegations are
15 found to be sufficient to establish the existence of malfeasance in
16 office, misfeasance in office, nonfeasance in office, or conviction
17 of a crime involving an act of dishonesty or a false statement,
18 the official whose removal is sought may submit a defense statement
19 as described in this subsection within twenty days after receiving
20 the notice of the decision. Upon receipt of the defense statement
21 or upon the expiration of such twenty-day period if no defense
22 statement is submitted, the filing clerk shall issue the petition
23 papers to the principal circulator or circulators pursuant to this
24 section. If the allegations are found not to be sufficient, the
25 filing clerk shall not issue the petition papers.

1 (5) The filing clerk shall notify the principal
2 circulator or circulators that the necessary signatures must be
3 gathered within thirty days ~~from~~ after the date of issuing the
4 petitions. ~~(4)~~ The filing clerk, upon issuing the initial petition
5 papers or any subsequent petition papers, shall enter in a record,
6 to be kept in his or her office, the name of the principal
7 circulator or circulators to whom the papers were issued, the date
8 of issuance, and the number of papers issued. The filing clerk
9 shall certify on the papers the name of the principal circulator or
10 circulators to whom the papers were issued and the date they were
11 issued. No petition paper shall be accepted as part of the petition
12 unless it bears such certificate. The principal circulator or
13 circulators who ~~check out~~ procure petitions from the filing clerk
14 may distribute such petitions to persons who may act as circulators
15 of such petitions.

16 ~~(5)~~ (6) Petition signers shall ~~conform to~~ comply with the
17 requirements of sections 32-629 and 32-630. Each signer of a recall
18 petition shall be a registered voter and qualified by his or her
19 place of residence to vote for the office in question.

20 Sec. 6. Section 32-1304, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 32-1304 (1) The Secretary of State shall design the
23 uniform petition papers to be distributed by all filing clerks
24 and shall keep a sufficient number of such blank petition papers
25 on file for distribution to any filing clerk requesting recall

1 petitions. The petition papers shall as nearly as possible conform
2 to the requirements of section 32-628.

3 (2) In addition to the requirements specified in section
4 32-628, for the purpose of preventing fraud, deception, and
5 misrepresentation, every sheet of each petition paper presented
6 to a registered voter for his or her signature shall have upon
7 it, above the lines for signatures, (a) a statement that the
8 signatories must be registered voters qualified by residence to
9 vote for the office in question and support the holding of a recall
10 election and (b) in letters not smaller than sixteen-point type
11 in red print (i) the name and office of the ~~individual~~ official
12 sought to be recalled, (ii) the ~~reason or reasons for which recall~~
13 ~~is sought,~~ statement of allegations filed pursuant to section 4
14 of this act, (iii) the defense statement, if any, submitted by
15 the official, and (iv) the name of the principal circulator or
16 circulators of the recall petition. ~~The~~ Neither the decision of a
17 county attorney to prosecute or not to prosecute any individual,
18 nor the finding of the district court pursuant to section 32-1303,
19 shall ~~not~~ be stated on a petition as a reason for recall.

20 (3) Every sheet of each petition paper presented to a
21 registered voter for his or her signature shall have upon it, below
22 the lines for signatures, an affidavit as required in subsection
23 (3) of section 32-628 which also includes language substantially as
24 follows: "and that the affiant stated to each signer, before the
25 signer affixed his or her signature to the petition, the following:

1 (a) The name and office of the ~~individual~~ official sought to be
2 recalled, (b) the ~~reason or reasons for which recall is sought as~~
3 ~~printed on the petition,~~ statement of allegations filed pursuant to
4 section 4 of this act, (c) the defense statement, if any, submitted
5 by the official as printed on the petition, and (d) the name of the
6 principal circulator or circulators of the recall petition".

7 (4) Each petition paper shall contain a statement
8 entitled Instructions to Petition Circulators prepared by the
9 Secretary of State to assist circulators in understanding the
10 provisions governing the petition process established by sections
11 32-1301 to 32-1309 and section 4 of this act. The instructions
12 shall include the following statements:

13 (a) No one circulating this petition paper in an attempt
14 to gather signatures shall sign the circulator's affidavit unless
15 each person who signed the petition paper did so in the presence of
16 the circulator.

17 (b) No one circulating this petition paper in an attempt
18 to gather signatures shall allow a person to sign the petition
19 until the circulator has stated to the person (i) the object of the
20 petition as printed on the petition, (ii) the name and office of
21 the individual sought to be recalled, (iii) the ~~reason or reasons~~
22 ~~for which recall is sought as printed on the petition,~~ statement
23 of allegations filed pursuant to section 4 of this act, (iv) the
24 defense statement, if any, submitted by the official as printed
25 on the petition, and (v) the name of the principal circulator or

1 circulators of the recall petition.

2 Sec. 7. Section 32-1306, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 32-1306 (1) If the recall petition is found to be
5 sufficient, the filing clerk shall notify the official whose
6 removal is sought and the governing body of the affected political
7 subdivision that sufficient signatures have been gathered.
8 Notification of the official sought to be removed may be by any
9 method specified in section 25-505.01 or, if notification cannot be
10 made with reasonable diligence by any of the methods specified in
11 section 25-505.01, by leaving such notice at the official's usual
12 place of residence and mailing a copy by first-class mail to the
13 official's last-known address.

14 (2) The governing body of the political subdivision shall
15 order an election to be held not less than thirty nor more
16 than forty-five days after the notification of the official whose
17 removal is sought under subsection (1) of this section, except that
18 if any other election is to be held in that political subdivision
19 within ninety days after such notification, the governing body of
20 the political subdivision shall provide for the holding of the
21 recall election on the same day. All resignations shall be tendered
22 as provided in section 32-562. If the official whose removal is
23 sought resigns before the recall election is held, the governing
24 body may cancel the recall election if the governing body notifies
25 the election commissioner or county clerk of the cancellation at

1 least sixteen days prior to the election, otherwise the recall
2 election shall be held as scheduled.

3 (3) If the governing body of the political subdivision
4 fails or refuses to order a recall election within the time
5 required, the election may be ordered by the district court having
6 jurisdiction over a county in which the elected official serves. If
7 a filing clerk is subject to a recall election, the Secretary of
8 State shall conduct the recall election.

9 (4) The filing clerk shall notify the Secretary of State
10 whenever the recall petition is found to be sufficient and an
11 election will be held under this section.

12 Sec. 8. Section 32-1308, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 32-1308 (1) If a majority of the votes cast at a recall
15 election are against the removal of the official named on the
16 ballot or the election results in a tie, the official shall
17 continue in office for the remainder of his or her term but may be
18 subject to further recall attempts as provided in section 32-1309.

19 (2) If a majority of the votes cast at a recall election
20 are for the removal of the official named on the ballot, he or she
21 shall, regardless of any technical defects in the recall petition,
22 be deemed removed from office unless a recount is ordered. If the
23 official is deemed removed, the removal shall result in a vacancy
24 in the office which shall be filled as provided in this section and
25 sections 32-567 to 32-570.

1 (3) If the election results show a margin of votes
2 equal to one percent or less between the removal or retention
3 of the official in question, the Secretary of State, election
4 commissioner, or county clerk shall order a recount of the votes
5 cast unless the official named on the ballot files a written
6 statement with the filing clerk that he or she does not want a
7 recount.

8 (4) If there are vacancies in the offices of a majority
9 or more of the members of any governing body at one time due to the
10 recall of such members, a special election to fill such vacancies
11 shall be conducted as expeditiously as possible by the Secretary of
12 State, election commissioner, or county clerk.

13 (5) No official who is removed at a recall election or
14 who resigns after the initiation of the recall process shall be
15 appointed to fill the vacancy resulting from his or her removal or
16 the removal of any other member of the same governing body during
17 the remainder of his or her term of office.

18 (6) The filing clerk shall notify the Secretary of State
19 regarding the results of the election.

20 (7) The Secretary of State shall compile records of all
21 notifications received from filing clerks under sections 32-1301
22 to 32-1309 and section 4 of this act. The Secretary of State may
23 prescribe the form for such notifications.

24 Sec. 9. Original sections 32-101, 32-1301, 32-1302,
25 32-1303, 32-1304, 32-1306, and 32-1308, Reissue Revised Statutes of

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1 Nebraska, are repealed.