

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 224

Introduced by Avery, 28.

Read first time January 10, 2011

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Election Act; to amend sections 32-1301,
2 32-1302, 32-1303, 32-1304, 32-1306, and 32-1308, Reissue
3 Revised Statutes of Nebraska, and section 32-101, Revised
4 Statutes Cumulative Supplement, 2010; to change
5 provisions relating to recall; to require notification as
6 prescribed; to harmonize provisions; and to repeal the
7 original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Revised Statutes Cumulative
2 Supplement, 2010, 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 and
8 section 4 of this act:

9 (1) Filing clerk means, ~~filing clerk shall mean~~ the
10 election commissioner or county clerk for recall of ~~elected officers~~
11 officials of cities, villages, counties, irrigation districts,
12 natural resources districts, public power districts, school
13 districts, community college areas, educational service units,
14 hospital districts, and 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 official
18 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 political
3 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 to
8 31-793, any elected official of a political subdivision and any
9 elected member of the governing bodies of cities, villages, counties,
10 irrigation districts, natural resources districts, public power
11 districts, school districts, community college areas, educational
12 service units, hospital districts, and metropolitan utilities
13 districts may be removed from office by recall pursuant to sections
14 32-1301 to 32-1309 and section 4 of this act. Elected officials may
15 be recalled only for malfeasance in office, misfeasance in office,
16 nonfeasance in office, or conviction of a crime involving an act of
17 dishonesty or a false statement. A trustee of a sanitary and
18 improvement district may be removed from office by recall pursuant to
19 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 the
24 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 be
7 held within the member's precinct, district, or subdistrict. When an
8 elected member is nominated by precinct, district, or subdistrict in
9 the primary election and elected at large in the general election,
10 the recall provisions shall apply to the registered voters at the
11 general election.

12 (4) The recall procedure and special election provisions
13 shall apply to the mayor and members of the city council of
14 municipalities with a home rule charter notwithstanding any contrary
15 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 typewritten
18 statement, in concise language of sixty or fewer words, alleging
19 facts which if true establish malfeasance in office, misfeasance in
20 office, nonfeasance in office, or conviction of a crime involving an
21 act of dishonesty or a false statement, for which recall of the
22 official is sought. Such voter or voters shall be deemed to be the
23 principal circulator or circulators of the recall petition.

24 Sec. 5. Section 32-1303, Reissue Revised Statutes of
25 Nebraska, is amended to read:

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

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

24 (3) The petition papers shall be procured from the filing
25 clerk. The filing clerk shall notify the Secretary of State when

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

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

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

24 (5) The filing clerk shall notify the principal
25 circulator or circulators that the necessary signatures must be

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

13 ~~(5)-(6)~~ Petition signers shall ~~conform to comply with~~ the
14 requirements of sections 32-629 and 32-630. Each signer of a recall
15 petition shall be a registered voter and qualified by his or her
16 place of residence to vote for the office in question.

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

19 32-1304 (1) The Secretary of State shall design the
20 uniform petition papers to be distributed by all filing clerks and
21 shall keep a sufficient number of such blank petition papers on file
22 for distribution to any filing clerk requesting recall petitions. The
23 petition papers shall as nearly as possible conform to the
24 requirements of section 32-628.

25 (2) In addition to the requirements specified in section

1 32-628, for the purpose of preventing fraud, deception, and
2 misrepresentation, every sheet of each petition paper presented to a
3 registered voter for his or her signature shall have upon it, above
4 the lines for signatures, (a) a statement that the signatories must
5 be registered voters qualified by residence to vote for the office in
6 question and support the holding of a recall election and (b) in
7 letters not smaller than sixteen-point type in red print (i) the name
8 and office of the individual official sought to be recalled, (ii) the
9 ~~reason or reasons for which recall is sought, statement of~~
10 allegations filed pursuant to section 4 of this act, (iii) the
11 defense statement, if any, submitted by the official, and (iv) the
12 name of the principal circulator or circulators of the recall
13 petition. ~~The Neither the decision of a county attorney to prosecute~~
14 ~~or not to prosecute any individual, nor the finding of the district~~
15 ~~court pursuant to section 32-1303, shall not be stated on a petition~~
16 as a reason for recall.

17 (3) Every sheet of each petition paper presented to a
18 registered voter for his or her signature shall have upon it, below
19 the lines for signatures, an affidavit as required in subsection (3)
20 of section 32-628 which also includes language substantially as
21 follows: "and that the affiant stated to each signer, before the
22 signer affixed his or her signature to the petition, the following:
23 (a) The name and office of the individual official sought to be
24 recalled, (b) the ~~reason or reasons for which recall is sought as~~
25 ~~printed on the petition, statement of allegations filed pursuant to~~

1 section 4 of this act, (c) the defense statement, if any, submitted
2 by the official as printed on the petition, and (d) the name of the
3 principal circulator or circulators of the recall petition".

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

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

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

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

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

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

25 (3) If the governing body of the political subdivision

1 fails or refuses to order a recall election within the time required,
2 the election may be ordered by the district court having jurisdiction
3 over a county in which the ~~elected~~-official serves. If a filing clerk
4 is subject to a recall election, the Secretary of State shall conduct
5 the recall election.

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

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

11 32-1308 (1) If a majority of the votes cast at a recall
12 election are against the removal of the official named on the ballot
13 or the election results in a tie, the official shall continue in
14 office for the remainder of his or her term but may be subject to
15 further recall attempts as provided in section 32-1309.

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

23 (3) If the election results show a margin of votes equal
24 to one percent or less between the removal or retention of the
25 official in question, the Secretary of State, election commissioner,

1 or county clerk shall order a recount of the votes cast unless the
2 official named on the ballot files a written statement with the
3 filing clerk that he or she does not want a recount.

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

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

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

16 (7) The Secretary of State shall compile records of all
17 notifications received from filing clerks under sections 32-1301 to
18 32-1309 and section 4 of this act. The Secretary of State may
19 prescribe the form for such notifications.

20 Sec. 9. Original sections 32-1301, 32-1302, 32-1303,
21 32-1304, 32-1306, and 32-1308, Reissue Revised Statutes of Nebraska,
22 and section 32-101, Revised Statutes Cumulative Supplement, 2010, are
23 repealed.